92-83

Supreme Court, U.S.
FILED
JUN 23 1992
OFFICE OF THE CLERK

NO.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

JOHN D. TURNER

Petitioner

versus

Financial Corporation of America

Respondent

APPENDIX

John D. Turner
Petitioner
5405 Prospect Road No. 1,
San Jose, California 95129-4846
(408) 446-9888

TABLE OF CONTENTS

NINTH CIRCUIT MEMORANDUM 1a-21a

NINTH CIRCUIT DENIAL
OF PETITION FOR REHEARING 22a

NINTH CIRCUIT JUDGMENT 23a-24a

DISTRICT COURT AMENDED
MEMORANDUM AND ORDER 25a-51a

DISTRICT COURT JUDGMENT 52a-53a

PETITION FOR REHEARING 54a-74a

1985 10-K EXCERPTS 75a-91a

ALL MEDIA STORIES SUBMITTED
BY DEFENDANTS 92a-131a

COMPANY PRESS RELEASES
SUBMITTED BY PLAINTIFF 132a-162a; 213a-228a

THE PROOF OF LOSS EXCERPTS. 163a-176a

DECLARATION OF AMERICAN'S ATTORNEY
SWINNEY ON CANNERY ROW LOAN LOSSES 177a-179a

DEPOSITION TESTIMONY OF PETITIONER
TURNER REGARDING LOAN LOSSES . . . 179a-186a

AMERICAN'S INSOLVENCY KNOWN BY THE
SF-FHLB, THE FHLBB, AND ADMISSIONS
OF THE EXPECTED COST TO FSLIC . . 191a-198a

STOCK PRICE TRADING RANGE
DURING PERIOD OF ACCUMULATION . . 199a-208a

VALUELINE "RISKY" DISCLOSURE. . . 209a-212a

STATUES AND RULES 235a-238a

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JOHN D. TURNER,

Plaintiff/Appellant

__vs.__

FINANCIAL CORPORATION OF AMERICA et al.,

Defendants/Appellees

NO. 90-15847

USDC No. C-89-2486 MHP

MEMORANDUM*

Appeal from the United States District Court for the Northern District Court of California - Marilyn H.Patel, District Judge, Presiding

Before: D.W. NELSON, NOONAN and FERNANDEZ, Circuit Judges.

---

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

John D. Turner appeals from a grant of summary judgment in his securities fraud, RICO and common law action against defendants/appellees. The district courts' order granting summary judgment is affirmed.

I. Facts and Procedural Background

During the period between April 1986 and 1987, Turner purchased 90,000 shares of Financial Corps. of America (FCA) stock at a cost of $816,125. FCA was later taken over by federal regulators. Turner lost substantial amounts of money and attributes these loses to alleged fraudulent misrepresentations and omissions by FCA, certain officers and directors, American Savings and Loan Association ("American"), a subsidiary of FCA, and the outside accountants, KPMG

Peat Marwick ("Peat Marwick").

Before buying stock in 1986, Turner reviewed FCA's 1985 10-K, which revealed several financial problems: 1) loan loss reserves had been increased by $422 million as of the end of 1984 and by $182 million as of the end of 1985, 2) the loan portfolio was being investigated, and 3) FCA was being sued in various class action suits arising out of the activities of the management which headed the company until 1985. Those suits were subsequently settled for between $32 and $42.7 million.

Several stock reporting services, including one that Turner subscribed to, reported FCA as a "risky investment," giving it the "lowest safety rating."

After ordering that Turner's deposition be taken to flesh out his claims for reliance on the alleged misrepresentations, the district court granted defendants' /appellees' motion for summary judgment. The district court found that there were no genuine issues of material fact as to whether material misrepresentations existed or on the issue of Turner's reliance on any alleged misrepresentations. Summary judgment was also granted on the RICO claims under U.S.C. §§ 1961-1968.

II. DISCUSSION

1. Turner's deposition

Turner alleged that the district court abused its discretion in ordering that his deposition be taken instead of

allowing him to amend his complaint. Trial courts have broad discretion in promoting efficient and equitable case management. Se, In re Fine Paper Antitrust Litigation, 685 F.2d 810, 817 (3rd Cir. 1982), cert. denied, 459 U.S. 1156 (1983). The trial court did not abuse its discretion by ordering Turner's deposition taken instead of granting summary judgment based upon the pleadings.

2. Summary Judgment

We review de novo the district court's decision to grant summary judgment. In re Apple Computer Securities Litigation, 866 F.2d 1109, 1112 (9th Cir.1989), cert. denied, ____U.S. ____,110 S.Ct. 3229 (1990). Summary Judgment is appropriate where "there is no genuine issue as to

any material fact and ... the moving party is entitled to judgment as a matter of law." Fed. Rule Civ. Pro. 56(c); In Re Apple Securities Litigation 886 F.2d at 1112 (quotations omitted). To establish his claims, appellant must prove "materiality" and "reliance". These issues can be resolved by summary judgment "where there can be but one reasonable conclusion" as to the facts. In Re Apple Securities Litigation 886 F.2d at 1112-13.

A. Material Misstatements

Turner claims that FCA President Popejoy made material misstatements in his press releases and the company's 10-K's and 10-Q's filed with the Securities and Exchange Commission (SEC). He points to statements such as we're out of harms

way" as potentially misleading.

In Virginia Bankshares, Inc. v. Sandberg, 111 S.Ct. 2749 (1991), the Supreme Court held that knowingly false statements of reasons, opinion, or belief, even though conclusionary in form, may be actionable under § 14(a), we assume for our purposes that this analysis is equally applicable to claims made pursuant to § 10(b) for material misstatements of fact. See, Basic v. Levinson, 485 U.S. 224, 231-32 (1988).

In Basic, the Supreme Court expressly adopted the standard of materiality set out in the § 14(a) context as applicable to the § 10(b) context.

Id.

The actionable false statements in

Virginia Bankshares regarded a freeze out merger where the directors stated, in a proxy statement, that the value of the stock was high and the price was fair. The Court established a new standard for materiality, stating that "not every mixture with the true will neutralize the deceptive. If it would take a financial analyst to spot the tension between the one and the other, whatever is misleading will remain materially so, and liability should follow." Id. at 2760.

The statements that Turner claims are materially misleading are Popejoy's opinions or beliefs regarding the present and future of FCA. That kind of statement may be actionable if knowingly false. In Virginia Bankshares, the Court found that the directors held out $42 per share as a fair price, even though the

shares were worth $60. This case is not so simple, because in making his optimistic statements regarding FCA, Popejoy may have really believed that what he was saying was true.

Even is we assume that the statements were knowingly false, Turner's claim fails because he was exposed to such a morass of contrary information that it was not reasonable for him to rely solely upon Popejoy's optimistic statements as evidence that all the other available information was inaccurate. Reliance requires demonstration of a casual connection between a defendant's misrepresentation and a plaintiff's injury. Basic v. Levinson, 485 U.S. 224, 243 (1988). Reliance by investors, on publicly available information is presumed for purposes of a rule 10b-5

action. Id. However, this presumption may be rebutted by "any showing that severs the link between the alleged misrepresentation and either the price received (or paid) by plaintiff, or his decision to trade at a fair market price." Id. at 248. Additionally, the presumption may be rebutted when investors would have acted in the same manner had they not relied on the integrity of the market. Id. at 249. The casual connection between Popejoy's statements and Turner's purchases and losses is missing in this case. At the time of Popejoy's statements, the papers were filled with news of FCA's financial difficulties and it's previous unsound lending practices. In 1985 the New York Times called FCA "the most explosive, speculative stock on the New York Exchange." Thomas C. Hayes, Financial

Corp.'s Climb Back, New York Times, Oct. 9, 1985, at D1, cited at ER 20.

The articles that Turner points to as being misleading because of their optimistic statements also include negative information and caution careful evaluation. For example, the article Turner used to show alleged misstatements identifies the problems with FCA. The article read, "[t]he company is out of danger, but still about three years away from being financially sound...potential decreases in real estate values, however could still result in increased additions to the reserves in the fourth quarter." Mark Basch, Financial Corp.s Popejoy Upbeat about Thrift's Future Health, American Banker, September 22, 1986, cited at ER 47. And, in Business Week, which calls FCA "Financial Corpse of

America," Popejoy is quoted as fretting, "I hope expectations aren't getting too high." Teresa Carson, FCA still Has to Live Up to Its Stock Price, Business Week, Mar. 10, 1986, at 34, cited at ER 4.

In Virginia Bankshares, the shareholders relied on the knowledge and expertise of those who appraised the stock in voting for the merger. Virginia Bankshares, 111 S.Ct. at 2757. There was no evidence that the investors were confronted with any contrary information from any outside authority, including the press. Here, Turner himself was inundated with information directly contrary to FCA's press release asserting it was "out of harms way". He admitted to reviewing the 10-K, which revealed several financial problems, as well as subscribing to

several stock reporting services which gave FCA the lowest safety rating as a risky investment.

The district court found that Turner did his own detailed financial analysis using Lotus 1-2-3 spreadsheets and was following the company closely. Turner's analysis and his knowledge about FCA's financial difficulties is sufficient to support the district court's judgment that reliance had not been established. Basic, Inc., 485 U.S. at 249. Thus, even if tne statements are misleading, Turner could not have reasonably been influenced by them in light of the inconsistency in the total mix of information available to and utilized by Turner at the time.

B. Material Omissions

Turner also alleges that FCA failed to disclose the inadequacy of its loan loss reserves. However, in the 1985 10-K disclosed the increase of loan loss reserves by $422 million in 1984 and $182 million in 1985. It also stated that FCA was still reviewing the loan portfolio. The press reported that loan loss reserves were expected to be raised. This information indicates the tremendous need to set aside funds for losses and that the company anticipated and made it known to the market that additional losses, and thus additional loss reserve funds, might be necessary. Turner admitted in his deposition that he can't point to something [in the 1985 10-K] and say it was a misstatement." The district court did not err in concluding that no material omission occurred.

Turner also challenges FCA's failure to disclose the Proof of Loss statement the company filed with it's insurance company to cover some of its bad loans. The Proof of Loss statement speaks of unsound lending practices which led to loans which could not be paid back and made FCA vulnerable to interest rate fluctuations. Although the document was not disclosed to the public, Turner pointed to no material information contained in the proof of loss which should have been disclosed. In his deposition, he was asked: "Is there anything that's raised in the Proof Of Loss financially, numbers, dollars and cents, that isn't reported in the 10-k?" Turner responded, "No ... As far as I'm aware." The previous management's unsound banking practices were much discussed in the press and mentioned in the 1985 10-K.

The need for loan loss reserves to compensate for these bad loans was also documented in the official statements of the corporation.

An omission is material if disclosure of the omitted statement would have altered the total mix of information available to the reasonable investor. Basic v. Levinson, 485 U.S. 224 231-32 (1988). There is no evidence that disclosure of the proof of loss statement would have altered the mix of information available since the information it contained was already available in the 10-K and in the press. Accordingly, the failure to disclose this information was immaterial.

Turner also alleges fraud stemming from the failure to disclose the potential sale of FCA to the Federal Home Loan Bank

Board (FHLBB). Yet the fact that FCA as a takeover candidate was well documented in the press. Popejoy had also told American Banker in September 1086 that he would welcome discussion with possible merger partners who could infuse much needed capital into the company. Mark Basch, Financial Corp.s Popejoy Upbeat about Thrift's Future Health, American Banker, September 22, 1986, cited at ER 47.

In fact Turner admitted in his deposition that FCA's potential as a buy-out candidate was one of the reasons he bought 50,000 shares of stock in June 1986. Any failure of disclosure was immaterial because the information was already publicly available.

Similarly, Turner claims FCA should have disclosed that Peat Marwick's 1985

unqualified audit opinion was premised upon the FHLBB providing a letter of support. Turner does not argue this claim on appeal and has therefore abandoned it. Cross v. State of Washington, 911 F,2d 341, 345 (9th Cir. 1990), cert. denied, ___U.S. ___, 111 S.Ct. 1313 (1991). Additionally, the letter of support from the FHLBB was quoted in full in the 1985 10-K. No material omission occurred with regard to this letter.

3. RICO

Turner also alleges an on-going RICO conspiracy between the FHLBB and FCA. However, a RICO claim requires an underlying predicate act of securities fraud. Occupational-Urgent Care Health Systems, Inc. v. Sutro & Co., Inc., 711

F. Supp. 1016, 1019 (E.D. Cal. 1989). None was shown here. Furthermore, Turner has not presented sufficient evidence of continuing fraudulent activity or the threat of such activity. Summary judgment was proper under these circumstances. H.J. Inc. v. Northwestern Bell, 492 U.S. 229 (1989).

4. Common Law Fraud Claims

Summary judgment for defendants/appellees was also granted on Turner's common law fraud claims. Where Turner has established neither the basic elements of material misrepresentation nor reliance, summary judgment was proper.

5. Turner's request for additional discovery

Turner contends that it was error not to

allow him additional time for discovery. Turner has not alleged specifically what would be gained by conducting discovery. A party is not entitled to discovery based upon the mere assertion that there are genuine issues of material fact. Hall v. Hawaii, 791 F.2d 759, 761 (9th Cir. 1986). Denial of the discovery request was proper where discovery would not alter the basis of summary judgment. California Union Insurance Co. v. American Diversified Sav. Bank, 914 F.2d 1271 (9th Cir. 1990), cert. denied sub. nom., Sahini v. Harbor Ins. Co., ___U.S.___, 111 S.Ct. 966 (1991). The district court did not abuse its discretion in denying Turner's request.

III. Conclusion

The district court's decision to grant summary judgment is affirmed. No abuse

of discretion was committed by ordering Turner's deposition, by denying him leave to amend his complaint or by denying his request for additional discovery.

AFFIRMED.

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOHN D. TURNER Plaintiff/Appellant v. FINANCIAL CORPORATION OF AMERICA, ET. AL. Defendants/Appellees	NO. 90-15847 USDC NO. C-89-2486-MHP ORDER

Before: D.W. Nelson, Noonan and Fernandez, Circuit Judges.

Judges D.W. Nelson and Fernandez voted to deny appellant's petition for re-hearing. Judge Noonan voted to grant appellant's petition for rehearing.

Appellant's petition for rehearing is DENIED.

[STAMPED]
FILED APR - 1, 1992
CATHY A. CATTERSON, CLERK
U.S.COURT OF APPEALS

JUDGMENT

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NO. 90-15847
CT/AG#: C-89-2486-MPH

JOHN D. TURNER
Plaintiff-Appellant

v.

FINANCIAL CORPORATION OF AMERICA; AMERICAN SAVINGS AND LOAN ASSOCIATION PEAT MARWICK MAIN & COMPANY; ROBERT BARTON; WILLIAM POPEJOY et al.,

Defendants-Appellees

FILED
APR 27, 1992
RICHARD W WIEKING
CLERK

APPEAL FROM the United States District Court for the Northern District of California (San Francisco).

THIS CAUSE came on to be heard on the Transcript of the Record from the

United States District Court for the Northern District of California (San Francisco) and was duly submitted.

ON CONSIDERATION WHEREOF, It is now ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and hereby is affirmed. Costs taxed.

Filed and entered February 21, 1992
A TRUE COPY; CATHY A. CATTERSON; Clerk of Court ATTEST APR 23 1992 by: Deputy Clerk

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

JOHN D. TURNER,

Plaintiff

__vs.__

FINANCIAL CORPORATION OF AMERICA et al.,

Defendants.

No. C-89-2486 MHP

AMENDED MEMORANDUM AND ORDER

Plaintiff John Turner ("Turner") brought this action against defendants, Financial Corporation of America ("FCA"); American Savings and Loan Association ("American"); Peat Marwick Main and Company ("PMM") and the individual defendants.[1] Plaintiff asserted federal claims under the Securities and Exchange Act of 1934 (sections 10(b)"), 15 U.S.C. § 78j and rule 10-b5 of the promulgation

therein, 17 C.F.R. § 240.10b-5 and under the RICO act, 18 U.S.C. §§ 1961-1968. In addition Plaintiff asserted state law claims of common law fraud, negligent misrepresentation and breach of fiduciary duty. The Federal Savings and Loan Insurance Corporation ("FSLIC") is acting as receiver for defendant American. The case is now before the court on defendants' motions for summary judgment, or in the alternative, summary adjudication of claims. Having considered the arguments and papers submitted by both parties , this court hereby grants defendants' motion for summary judgment in favor of all defendants.

BACKGROUND

American is a wholly-owned subsidiary of FCA. In 1984, under the management of

Chief Executive Officer Charles Knapp, American suffered a run on its deposits and its stock price plummeted from a high of $24 1/4 in January 1984 to a low of $5 1/8 in August of the same year. Following a tremendous decline in American's stock price Charles Knapp resigned and was succeeded by William Popejoy ("Popejoy") as chief executive officer of American in August 1984. Popejoy then announced the formation of an independent task force to determine the adequacy of loan loss reserves for the loans created during the period of Knapp's management. Such loans were alleged to have been made under inadequate of fraudulent banking practices. Upon completion of the Task force's review, the loan loss reserves were increased by $422,000,000. This fact was reported in FCA's 1985 10-K

report submitted to the Securities and Exchange Commission ("SEC") in March 31, 1986. The 1985 10-K report also revealed that periodic reviews of the loan loss reserves would take place and mentioned ongoing litigation resulting from Charles Knapp's loan making activity during his tenure at American.

Defendant PMM became involved with FCA as its independent auditor in 1984. Initially PMM had issued a qualified opinion certifying FCA's ability to operate as a going concern from FCA's 1985 financial statements. Subsequently, on March 25, 1986, PMM changed their initial opinion and issued an unqualified opinion certifying FCA's ability to operate as a going concern. This change was made pursuant to PMM's reliance upon a letter of support from the FHLBB to FCA

stating that the Federal Home Loan Bank Board ("FHLBB") would support American through its financial difficulties should the need arise. On March 31, 1986, the annual report containing PMM's unqualified opinion of FCA was submitted to its shareholders. Plaintiff received a copy on this date as well.

Plaintiff is a mortgage broker who has been in the real estate business for 30 years. From April 1986 through April 1987 plaintiff purchased a total of 90,000 shares of FCA stock. Subsequently American declared bankruptcy and plaintiff incurred a loss of approximately $816,000 resulting from the decline of FCA stock.

LEGAL STANDARD

Under Federal Rule of Civil Procedure 56, summary judgment shall be granted "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial...since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial." Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986). See also T.W. Electric Serv. v. Pacific Elec. Contractors Ass'n, 809 F.2d 626,630 (9th Cir. 1987) (the non moving party may not rely upon the pleadings but must present specific facts creating a genuine issue of material fact); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 278 (1986) (a dispute about a material fact is genuine "if the

evidence is such that a reasonable jury could return a verdict for the non moving party") The court's function, however, is not to make credibility determinations. Anderson, 477 U.S. at 249. The inference to be drawn from the facts must be viewed in a light most favorable to the party opposing the motion. T.W. Elec. Serv., 809 F.2d at 631.

DISCUSSION

I. FSLIC's Motion for Summary Judgment.

A. 10 (b) and 10b-5 Claims

Plaintiff in his November 1989 deposition alleges four omissions which serve as the basis for his 10(b) and 10b-5 claims. Plaintiff alleges that defendant failed

to disclose:

1) the fact that millions of dollars worth of improvident loans existed which were not reflected in the loan loss reserves reported by FCA;

2) that certain of its losses were attributable to fraud as claimed in American's Proof of Loss statement[2] submitted to its insurance company in 1986;

3) that the FHLBB was searching for a buyer for American; and

4) that the unqualified opinion issued by PMM in FCA's 1985 financial statements was the result of PMM's reliance on a letter of support from the FHLBB.

Furthermore, plaintiff asserts that it relied upon the overly optimistic statements made by Popejoy during the period plaintiff invested in FCA stock and that Popejoy's statements constituted

material misrepresentations.

Defendant FSLIC contends that this court should grant summary judgment in its favor because plaintiff fails to establish the elements of materiality and reliance required in securities fraud claims. Plaintiff represents himself in this action and maintains that the above omissions and misrepresentations were material and that he relied upon them.

1. Materiality

The test for determining the materiality of an omission was set forth in Basic, Inc. v. Levinson, 485 U.S. 224 (1988). The Supreme Court stated that an omission would be deemed material if there was 'a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as

having significantly altered the "total mix" of information available.' Id. at 231-32, quoting TSC Indus. Inc. v. Northway, Inc., 426 U.S. 438,449 (1976). Adhering to the Basic court's definition of materiality, this court is unable to find the above non-disclosures material for the following reasons.

From the numerous exhibits submitted, it appears that the information available in the marketplace, both before and during plaintiff's purchases, was sufficient to give plaintiff an accurate picture of FCA's financial condition.

Two of FCA's alleged omissions were reported by prominent financial publications prior to and during the time plaintiff purchased FCA stock. The fact that American was the subject of a

takeover, or that a buyer was being sought for it, was well documented in the press. Thurston Dec., Exs. 16 and 47. Additionally, the fact that PMM Relied on a letter of support from the FHLBB was reported in a Wall Street Journal article dated April 1, 1986.[3] Thurston Dec., Ex 23. The remaining two omissions alleged by plaintiff, pertaining to the understated amounts of loan loss reserves and the fraud mentioned in FCA's proof of loss statement, may also be deemed immaterial amidst the amount of information available concerning FCA's financial condition and history.

The major omission on which plaintiff appears to base his 10b-5 claim is the alleged failure of FCA to disclose the actual amount of improvident loans existing on its books at the time of the

completion of the task force's review. Although plaintiff is correct in asserting that the loan loss reserves underestimated the actual amount of improvident loans existing, the fact that the loan loss reserves were not "set in stone" was made quite clear in FCA's 10-K statement which plaintiff received on March 31, 1986. Thurston Dec., Ex. 24-30. Indeed, the 10-K provided that further increases in loan loss reserves were to be expected in the future and that FCA intended to review its loan loss reserves periodically throughout 1986. See Id. There were also numerous articles attesting to what was disclosed in the 10-K[4] besides the actual increases made to the loan loss reserves while plaintiff continued to purchase FCA stock. Thurston Dec. Exs 16 and 40. considering such evidence, this court is unable to

find that the alleged omission of the actual amount of improvident loans existed on FCA's books was material. Not only was FCA incapable of such an accurate estimation at the time plaintiff began investing, but this limitation was disclosed in the company's 10-K statement which plaintiff received prior to his investment in FCA.

Plaintiff relies on American's Proof of Loss statement,[5] submitted to its insurance company in 1986, in alleging that FCA failed to disclose the fraud of the Knapp management which had created the improvident loans. Again this alleged omission fails to meet the materiality test imposed by Basic. The details of the Knapp management's misdeeds were well documented in various financial periodicals as well as in FCA's

10-K report and financial statements. Thurston Dec. Exs 20,28 and 47. In addition plaintiff claims the losses as demonstrated by the proof of loss far exceeded defendant's disclosures. This is not supported by the proof of loss, however. The total of the sums referred to in the document is substantially the same as the amounts revealed in the 10-K and the public disclosures. Thus, plaintiff's alleged reliance on the Proof of Loss statement is unconvincing since such omissions cannot even be proven to have existed.

Plaintiff also assets that it relied upon the overly optimistic statements made by Popejoy. He contends that Popejoy's statements such as "We're out of harm's way ..." and "we're millineniums ahead of where we were a

year-and-a half ago," constituted material misrepresentations. See Thurston Dec., Ex. 47. General statements of optimism are ordinarily not actionable as 10b-5 material misrepresentations unless it can be shown that the speaker had no reasonable basis for making the statement or was aware of some undisclosed facts. See Marx v. Computer Sciences Corp.' 507 F.2d 485, 490 (9th Cir. 1974). Plaintiff has offered no proof indicating that Popejoy made those statements under such circumstances. Moreover, such statements are incapable of being branded as material misrepresentations since there was an abundance of public information detailing FCA's financial condition. Thurston Dec. Exs. 20,21,23,40, and 43. Even the articles plaintiff points to as being misleading because of their

optimistic statements include negative information and caution careful evaluation. See, e.g.' Thurston Dec. Exs., 20,21,23, and 47. Thus a reasonable jury could not find that the omissions or misrepresentations alleged by plaintiff were material since the disclosure would not have significantly altered the total mix of information available in the marketplace.

2. Reliance.

Defendant FSLIC contends that plaintiff's individual investment strategies and purchasing behavior are indicative of plaintiff's non-reliance on FCA's alleged misrepresentations and omissions. Plaintiff maintains that he relied on the omissions and misrepresentations outlined above. It

should first be noted that plaintiff was not unsophisticated. He was remarkably knowledgeable in the very field in which American operated. He also used a variety of sources to keep himself informed about the market in general, and American in particular. In making his decision to invest in FCA, plaintiff subscribed to various stock reporting services and utilized computer software packages. Thurston Dec. Exs. 6,12,13, and 14.

The facts indicate that as the price of FCA stock plummeted, plaintiff continued to purchase stock despite the negative publicity FCA was receiving. See Thurston Dec., exs. 16 and 47. Plaintiff himself admitted in his deposition that investment in FCA was classifiable as highly risky or

speculative. Thurston Dec., Exs. 17, 70. Plaintiff also acknowledged having reviewed the Value-Line stock report which characterized FCA stock as extremely volatile and risky, as well as other information in the marketplace. Exs. 12,20, and 21. After taking into account the facts presented in all of plaintiff's rationales for his continued purchase of FCA stock--despite its decline in value, this court finds that plaintiff is unable to prove the element of reliance in this case. This evidence, by its very nature, is particularly within the reach of plaintiff.

The only purchase which might be justified despite the stock's decline in value was the 500 shares plaintiff purchased allegedly for the purpose of obtaining a shareholder list from FCA.

The other purchases which took place despite a plethora of information existing in the marketplace tends to indicate that plaintiff was relying more on the "greater fool theory," (as some financial analysts have espoused as the reason for FCA's increase in stock value), than on any optimistic picture of FCA painted by Popejoy. Thurston Dec. Ex. 16. Although it has been held that questions of materiality and reliance involve assessments peculiarity within the province of the trier of fact, Arrington v. Merrill Lynch, Pierce, Fenner & Smith, Inc. 651 F.2d 615, 619 (9th Cir. 1981), the most recent pronouncement from the Ninth Circuit on the issue of materiality indicates summary judgment is appropriate where there can be but one reasonable conclusion. See Also In Re Apple

Computer Securities Litigation, 886 F.2d 1109, 1112-13 (9th Cir. 1989). Taking the facts viewed in the light most favorable to the plaintiff, this court is unable to find that plaintiff makes a sufficient showing to establish the existence of any material omissions or misrepresentations. Furthermore, even if such material misrepresentation or omission existed plaintiff still failed to establish the element of reliance. Thus the only reasonable conclusion this court can reach is to grant summary judgement in favor of FSLIC.

B. Common Law Claims

Plaintiff brings claims of common law fraud, negligent misrepresentation and breach of fiduciary duty against FSLIC. Since these claims require showings of

materiality and/or reliance, plaintiff could not prevail on these claims for the reasons explained above. Therefore, this court grants summary judgment in favor of FSLIC on these claims as well.

C. RICO CLaims

The predicate acts required under 18 U.S.C. section 1961(1)(D) are defendants' violations of the federal securities laws, therefore the RICO claims brought against defendants must also fail. See Generally, Occupational-Urgent Care Health Sys., Inc. v. Sutro & Co., 711 F. Supp. 1916, 1019 (E.D. Cal. 1989). Thus, summary judgment in favor of FSLIC is granted on these claims.

D. Mitigated Damages

The issue of mitigated damages raised by the defendants is moot since this court grants FSLIC's motion for summary judgment pursuant to Federal Rule of Civil Procedure 56.

II. PMM'S Motion for Summary Judgment

A. 10(b) and 10b-5 Claims

Defendant PMM contends that it owed no duty to disclose to plaintiff any information concerning FCA's financial condition. Plaintiff maintains however, that a duty to disclose did exist on PMM'S part and argues that the unqualified opinion issued by PMM in FCA's 1985 financial statements constituted a material omission upon which the plaintiff relied.[6] Before this court can proceed to discuss the merits

of plaintiff's securities fraud claims it must first resolve the issue of whether PMM owed plaintiff a duty to disclose information.

Defendant PMM argues that their professional duty as auditors is limited to conducting audits in conformity with generally accepted accounting standards ("GAAS"). They further contend that by their nature audits do not involve extensive research or analysis of management's future plans or of the plans of regulatory agencies. Despite PMM's above arguments, this court finds the Ninth Circuit's opinion in Roberts v. Heim, 670 F. Supp. 1466 (N.D.Cal.1987) dispositive of the issue of accountants' liability. In Roberts, the court acknowledged that accountants could be held liable under section 10(b) despite

the fact that "their statements comported with generally accepted accounting principals" ("GAAP"). Id. at 1480. The rational offered for finding liability was that the accounts' statements, albeit technically accurate, gave a false impression of the financial health of the company. Id. Thus, this court finds PMM owed a duty to plaintiff above and beyond the standards mandated by the Accounting Institute of Certified Public Accountants ("AICPA").

The question then to be addressed is whether PMM's alleged failure to disclose its reliance on the FHLBB letter of support constitutes a material omission. PMM, however, contends that this allegation is not supported in the record since there were numerous disclosures on PMM's reliance on the FHLBB letter. Pmm

points specifically to the notes to FCA's 1985 financial statement, FCA's 10-K report, and a Wall Street Journal article of April 1, 1986, where a PMM spokesman publicly announced that it relied upon the FHLBB letter in issuing its unqualified opinion. With such evidence presented before it, this court finds that plaintiff has failed to establish the underlying premise of his argument. There was no omission.

B. RICO CLAIMS

Again, since the predicate acts required under the RICO statue are defendant's violations of the Federal securities law, the RICO claims brought against PMM must fail, and summary judgment is granted in PMM's favor on these claims as well.

CONCLUSION

Accordingly, having considered the arguments and papers submitted by both parties, this court hereby GRANTS defendants' motion for summary judgment in favor of defendant Federal Savings and Loan Insurance Corporation and defendant Peat, Marwick, Main and Company.

IT IS SO ORDERED.

Dated: May 7, 1990

s/ Marilyn Hall Patel

United States District Judge

END NOTES

1. The individual defendants in this case are the officers/directors of FCA and/or American during the time Turner purchased FCA stock. The individuals are William J. Popejoy, Victor H. Indiek, Merril Butler, Donald E. Royer, Neil N. Stolz, J. Ralph Stone, Robert M. Barton, Annelise G. Anderson, Edwin L. Johnson, Thomas P. Kemp, Charles E. Young and Lawrence K. Roos.

2. The "Proof of Loss" is a document submitted by American to its insurance carriers. Contained in that document are claims in excess of $400 million attributed to the allegedly fraudulent banking practices during Charles Knapp's tenure.

3. The article provided in relevant part: "[FCA] said its outside auditors, Peat, Marwick, Mitchell & Co., issued an unqualified opinion after qualifying its opinion of Financial Corp. 1984 annual report. However, a Peat Marwick spokesman said the unqualified opinion resulted from a letter of support for financial corp. from the Federal Home Loan Bank Board, which promised to 'continue to provide support to the company...to enable it to continue as a going concern.'"

4. See Thurston Dec., Exs. 16 and 40. Exhibit 16 is an article which appeared on March 10, 1986, in Business Week which refers to FCA as "Financial Corpse of America." (emphasis added). Exhibit 40 is an article which appeared in the New York Times on June 13, 1986, and mentions the possibility of FCA increasing the loan loss provisions in the future.

5. This court notes that Plaintiff's submission on the Proof of Loss statement may be questionable since it is not authenticated. However, as noted above it does not support plaintiff's position in any event.

6. Unqualified opinions issued by PMM represent PMM's certification of FCA's ability to operate as a going concern.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

JOHN D. TURNER,

Plaintiff

__vs.__

FINANCIAL CORPORATION OF AMERICA et al.,

Defendants.

No. C-89-2486 MHP

JUDGMENT

Fed. R. Civ. P. 58

This action having come before this court, the Honorable Marilyn Hall Patel, United States District Judge presiding, and the issues having been duly presented and an order having been duly filed herein,

IT IS ORDERED AND ADJUDGED

that defendants' motion for summary

judgment is granted in favor of Federal Savings and Loan Insurance Corporation, Peat Marwick Main and Company, American Savings and Loan Association, William J. Popejoy, Victor H. Indiek, Meril Butler, Donald E. Royer, Neil N. Stolz, J. Ralph Stone, Robert M. Barton, Annelise G. Anderson, Edwin L. Johnson, Thomas P. Kemp, Charles E. Young, and Lawrence K. Roos and that this action is dismissed.

IT IS SO ORDERED

Dated: MAY 24, 1990

s/ MARILYN HALL PATEL

United States District Judge

IN THE

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOHN D. TURNER, Plaintiff/Appellant vs. FINANCIAL CORP. OF AMERICA, et al., Defendants/Appellees	No. 90-15847 DC# CV-89-2486-MHP Northern California (San Francisco) PETITION FOR REHEARING

PETITION FOR REHEARING BY APPELLANT

To The Clerk of the Ninth Circuit Court of Appeals:

Appellant John D. Turner respectfully petitions for rehearing citing the following points of material fact overlooked in the memorandum of decision.

I. MATERIAL POINTS OF FACT OVERLOOKED IN THE DECISION

Contrary to the appellate court's memorandum of decision page 8, stating "Turner also admitted in his deposition that he 'can't point to something [in the 1985 10-K] and say its a misstatement.'"

EXHIBIT 10 of the excerpts of record provided the appeals court by Turner at pages 94, line 23 through page 96, line 23 states:

"Q What is it that you believe was not accurate in any 10-Q or 10-K of FCA?

A Well, I think it's obvious that my argument is that Financial Corporation of America was under the control of the

Federal Home Loan Bank from August 1984 when they installed Mr. Popejoy, when they removed Mr. Knapp and installed Mr. Popejoy, that the entire purpose for keeping Financial Corporation of America operating has been to attempt to mitigate damages to FSLIC, and that had they followed the San Francisco recommendation, which Cerona gave, they would have closed it in 1984, and that the only reason they didn't close it was they didn't have the money in the fund to do it; and that it was -- in my opinion, the attempt then from that point forward as all of the bad news began to become revealed about the loan portfolio, the problems in the loan portfolio and et cetera, that every decision that was made was made in an attempt to keep this company operating, letting out as little

information as possible, and withholding information which had the market known, would probably have precipitated another run on the association, and certainly a valuation of the stock where it eventually ended up, as nothing.

Q What specifically do you feel was in the 10-Q or 10-K's on FCA that was not accurate?

A Specifically the provision for loan losses, the knowledge that the company had about the loan portfolio, the knowledge that the company had that properties were being carried on the books at values in excess of their known true values, and all the things that I outlined in my complaint.

Q Is there anything other than --

when you talk about the loan loss provisions, are you saying that the number that appeared, that the dollar amount that appeared for the loan losses was not accurate?

A No, the disclosure. Until I get in -- I have been unable to get in and go loan by loan by loan or transaction by transaction, which I'm hopeful that I will be able to do one day. But basically what was known about the loan portfolio as set forth in the proof of loss documents was discovered between the fourth quarter of 1984 and, according to the testimony of Mr. Popejoy, the signed sworn statement of Mr. Popejoy, and November of 1985. All the information about the fraudulently generated loans, loans that were generated without

proper underwriting standards, without appraisals in many instances, and et cetera, all the things that are set forth in that proof of loss were all known to the company between August of '84 and November of '85. None of this information was directly revealed in the 10-Q's and the 10-K's of the company."

In part the Proof of Loss states:

". . .these officers generated a high volume of loan transactions with significant loan fees without adherence to adequate underwriting standards and utilizing appraisals of collateral securing the loans that had no reasonable factual support."

" The bulk of these transactions,

typically construction or other types of commercial loans. . ."

"In generating these loans, the company often obtained higher than market rates of interest. However, these rates, extracted from borrowers because the Company was very often the sole source of funding available for these imprudent loans, were illusory because the borrower (and/or income from the proposed project) was incapable of repaying the loan or servicing the debt except through employment of an interest reserve. Another purpose of making these loans was to generate large amounts of origination fees which far exceeded the amounts which would have been paid by credit worthy borrowers." Proof of Loss, Turner Complaint, Exhibit "E" [hand numbered

pages 113-114].

The appeal court is respectfully advised that Turner said in the above deposition testimony that every statement on FCA's 1985 10-K referring to the $14.9 billion dollars in loan receivable assets was a misstatement since it did not disclose:

a) that the $14.9 billion of loan receivable assets were generated through a general practice of fraud and improvidence.

b) that the $14.9 billion of loan receivable assets were being carried on FCA's books at values above their known true value.

So the appeal court's statement on page eight of the memorandum stating "Turner also admitted in his deposition that he "can't point to something in [in the 1985 10-K] and say it is a misstatement" is an untrue characterization of what Turner said and a material point of fact overlooked in the decision.

The proof of loss discloses that senior management of FCA knew that the $14.9 billion in loan receivable assets were not only unsound an improvident -- but were originated through fraudulent practices. The San Francisco Federal Home Loan Bank knew that the value of these assets were as much as $4 billion dollars less than the $14.9 billion they were carried for upon FCA's books.

II. MATERIAL POINT OF FACT OVERLOOKED IN THE DECISION

On page 9 of the decision the appeal court states "There is no evidence that disclosure of the proof of loss statement would have altered the mix of information available since the information it contained was already available in the 10-K and in the press".

This statement is simply untrue. To arrive at such a conclusion one has to weigh soft information evidence and interpret it favorably to FCA and against Turner, which is in conflict with the supreme court decisions such as:

"Our prior decisions may not have uniformly recited the same language in

describing genuine factual issues under Rule 56, but it is clear enough from our recent cases that at the summary judgment stage the judge's function is not himself to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." Anderson v. Liberty Lobby, Inc., 477 U.S. (1985) at 249.

III. MATERIAL POINT OF FACT OVERLOOKED IN THE DECISION

The decision states at page 9 bottom paragraph "Turner also alleges fraud stemming from the failure to disclose the potential sale of FCA to the Federal Home Loan Bank Board(FHLBB)."

There is no evidence presented in this case that there was ever any mention of selling FCA to the FHLBB or that the

FHLBB would have purchased FCA. The evidence was that the FHLBB disclosed to FCA, in a regulatory meeting on November 6, 1986, that they were going to sell American Savings, FCA's only major asset. This meant that they were going to have to seize it in order to sell it. There was no talk of buying American from FCA in order to resell it.

The evidence was before the court in the form of the chronology of contact between the San Francisco Federal Home loan Bank (SF-FHLB) which reported a meeting:

"11/06/86 A quarterly meeting was held among FCA/American and representatives of the agency and the Bank Board. American's additional proposed asset growth again was discussed. The FHLBB

stated that it was considering becoming more active in the process of recapitalizing American by attempting to find a buyer for American. American's management stated that Drexal now felt an equity offering was not feasible under current market conditions."

Later in their corrections to the Peer Review Report on their performance the SF-FHLB complained:

"...Since September 1986, the FHLB-SF has not controlled the examination or supervision of American Savings and Loan. On that date, FHLB-SF was notified by Washington that we could not release examination conclusions, nor discuss these matters with American's management without the prior consent of the

Chairman. . ."

"With respect to supervision, the FHLB-SF has had little involvement since April 1986, when Chairman Gray and Chief of Staff Fairbanks seized control over the supervisory process" . . . "we have not been in a position to examine or supervise American effectively, and consistent with our responsibilities."

" . . . the significant Supervisory write-up estimates a $4 billion cost to the FSLIC to resolve this case."

" Because of its size, the Bank Board, under then Chairman Gray, became actively involved in attempts to resolve American's financial dilemma about two years ago." [February 1986]

APPELLANT TURNER'S PETITION;

And Turner Declaration Exhibit "14", where the new FHLBB Chairman M. Danny Wall states [on above video Exhibit "56"]:

"In the case of American of Stockton -- when I got to the Bank Board July 1, 1987 I discovered that that office was running American Savings and Loan and I immediately began to undo that. It had been there and it had been run from that office -- and those -- that suite of offices for several years."

IV. CONFLICT WITH BLACKIE, BASIC AND ANDERSON

This above information is far different from FCA attempting to sell itself, or to merge itself, where it was in control of its own destiny.

Further, it conflicts with the congressional intent when formulating the SEC laws that investors not be victims of secreted information:

"No investor, no speculator, can safely buy and sell securities upon the exchanges without having an intelligent basis for forming his judgment as to the value of the securities he buys or sells. The idea of a free and open public market is built upon the theory that competing judgments of buyers and sellers as to the fair price of a security brings [sic] about a situation where the market price reflects as nearly as possible a just price.

Just as artificial manipulation tends to upset the true function of an open market, so the hiding and secreting of important information obstructs the

operation of the markets as indices of real value." H. R. Rep. No. 1383, at 11. [As quoted from Basic v. Levinson, 485 U.S. at 246 (1988)]

"The test is more than satisfied when a series of financial reports uniformly misrepresent a particular item in the financial statement. In that situation the misrepresentations are"interrelated, interdependent, and cumulative"

Rule 10-b5 liability is not restricted solely to isolated misrepresentations or omissions; it may be predicated on a practice or course of business which operates as a fraud. . ." "fraudulently creating an illusion of prosperity and false expectations". (at 903 footnote 19) Blackie v. Barrack, 524 F.2d 891 (1975)."

APPELLANT TURNER'S PETITION;

Our holding that the clear-and-convincing standard of proof should be taken into account in ruling on summary judgment motions does not denigrate the role of the jury. It by no means authorizes trial on affidavits. Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge, whether he is ruling on a motion for summary judgment or for a directed verdict. The evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor. Adickes, 398 U. S., at 158-59. Neither do we suggest that the trial courts should act other than with caution in granting summary judgment or that the trial court may not deny summary judgment in a case

where there is reason to believe that the better course would be to proceed to a full trial. Kennedy v. Silas Mason Co., 334 U.S. 249 (1948). [As stated in Anderson v. Liberty Lobby, Inc., 477 U.S. (1985) at 255].

I respectfully submit that the court's decision in this case is deciding as a matter of law that because FCA's securities were risky (rather than a sham) they should not have been purchased by any reasonable person, including Turner.

FCA was a Fortune 500 Company listed on the New York Stock Exchange. The Courts standard as applied to me requires the assumption that every person who traded in FCA's securities during the period of the Popejoy era to have

purchased FCA stock even though it was commonly known in the market from media stories that FCA's financial statements were not disclosing losses that were built-in and not yet reported. And that every purchaser knew this, or should have known it from media reports and press stories. And that the reason for FCA's stock rising 326% from $5 to $17 was that every purchaser bought the security solely on the premises that someone else would pay a higher price for the valueless security they had bought. This conflicts with Basic's Class Action holding:

". . . Thus the market is performing a substantial part of the valuation process performed by the investor in a face-to-face transaction. The market is acting as the unpaid agent of the

investor, informing him that given all the information available to it, the value of the stock is worth the market price." Basic v. Levinson, 485 U.S. 224, at 244, (1988) quoting In Re LTV Securities Litigation, 88 F.R.D. 134, 143 (ND Tex. 1980)

On the basis of the material points of fact and the conflicts with other decisions of this court I respectfully petition this court for a rehearing.

Respectfully submitted

March 5, 1992

_____

John D. Turner - Appellant

[Barnes Exhibit 3; Appellees' From The United States District Court For the Northern District Of California; Case No. C-89-2486-MHP]

EXHIBIT D-17 FOR IDENTIFICATION
BARBARA VOLZING N.P.
DATE 11-9-89
DEPO OF John Turner
DEFENDANT'S EXHIBIT D-17

[Pertinent Sections copied from:]

SECURITIES AND EXCHANGE COMMISSION
FORM 10-K

FINANCIAL CORPORATION OF AMERICA

For the fiscal year ended
December 31, 1985

State Aggregate market value of voting stock. . . $493,252,733 as of March 21, 1986

Indicate number of shares outstanding. .

35,912,700 shares of common stock as of

March 21, 1986

1. BUSINESS

Delinquencies and Scheduled Items

. . .The increase in slow loan and foreclosed property categories of scheduled items (as defined by FHLBB regulations) and ratios of scheduled items to specified assets and to total

assets for American at the dated indicated. The increase in slow loan and foreclosed property categories of scheduled items during 1985 is primarily attributable to an increase in the number of construction loans which became delinquent. . .

Real Estate Valuation and Allowance for Estimate Losses

In 1984 the Company's new management appointed a Real Estate Task Force to make a special review of the adequacy of the Company's reserves for potential losses on loans and real estate investments. As a result of this evaluation, completed in March 1985, loan and real estate loss reserves were increased by $422 million as of December 31, 1984. The Company has not determined

the extent to which the loss reserves established at December 31, 1984 should have been allotted to different periods. The SEC is conducting an investigation relating to the Company's practices in establishing loan loss reserves. See "Legal Proceedings--Securities and Exchange Commission".

Following the completion of the examination of financial statements for 1984 and the filing of the Company's Form 10-K on April 1, 1985, the company commenced the development of a system that was intended to permit a more meaningful review of the loss reserves. By the end of 1985, all loans with principal balances in excess of $500,000 were reviewed. Because of the number of loans it was not practicable to complete the analysis of the adequacy of the

Company's loss reserves until the end of the fourth quarter of 1985.

At the end of the fourth quarter, as a result of the completion of the review commenced earlier in the year, the Company increased its provision for real estate and loan loss reserves by $25 million. That reserve was established because a significant number of additional foreclosures of single family residences had occurred since the prior review was completed. The additional reserve in the third quarter were developed statistically to take account of these new foreclosures.

At the end of the fourth quarter, as a result of the completion of the review commenced earlier in the year, the company increased its provision for real

estate and loan loss reserves by $157 million for the quarter and $182 million for the year, to $575 million at December 31, 1985, compared to $472 million at December 31, 1984 and $58 million at December 31, 1983.

The additional real estate valuation reserves were provided in 1985 for properties that continued to decline in value, primarily condominiums, and for properties located in areas where the real estate market is stagnant. Based on the operating experience during 1985 and the outlook for the future, many condominium projects were valued as apartment projects in the 1985 year end review instead of using the higher values as condominiums. The company also suffered cost overruns on several major projects. In addition, the 1985 loss

provision includes an estimated loss of $7 million to be incurred upon sale of certain loans.

The company intends to review its provision for losses periodically throughout 1986. It will attempt to make adjustments on a quarterly basis as required. However, because of the magnitude of the review process, it will not be possible to include the entire portfolio in each quarterly review. The company's goal is to identify and evaluate new problem areas as soon as reasonably practicable.

ITEM 3. LEGAL PROCEEDINGS

John L. Waller on behalf of himself and all others similarly situated, vs. Financial Corporation of America; ... a class action alleging violation of

federal securities laws arising out of the company's accounting for transactions involving foreclosed property and delinquent loans. This action was filed on May 3, 1983, following the Company's restatement of its 1982 financial reports with respect to these transactions. . . .

Husni vs. Financial Corporation of America;...The company is currently a party to several actions arising out of the accounting for purchases of Government National Mortgage Association pass-through certificates acquired under dollar reverse repurchase agreements.

Between August 17, 1984 and September 26, 1984, a total of 19 shareholders of the company filed derivative or class actions alleging violations of state and federal securities laws and breach of fiduciary

duties and waste of corporate assets against certain former and present directors and officers of the Company...On November 14, 1984 both a consolidated and derivative complaint and a consolidated class action were filed...The Company is named as only a nominal defendant The consolidated derivative complaint alleges that between August of 1983 and approximately July of 1984 the individual defendants, while officers and directors of the Company, caused the company to engage in a course of business conduct characterized by reckless high risk growth, resulting in mismanagement of the company, waste and diversion of corporate assets and breach of fiduciary duties owed the Company...The consolidated class action complaint alleges that the defendants, including the Company, pursued a course

of conduct which resulted in artificially inflating the market values of the Companies equity securities and that violations of federal and state securities laws occurred...

The Company has reached an agreement in principal to settle the class actions, Waller vs. FCA, et al., and the FCA Shareholder Litigation referred to herein above . . . The settlements contemplate that the Company will issue common stock (or cash at its option) to persons who purchased FCA securities between April 1, 1980 and April 15, 1985. The value of the settlements to the classes is a minimum of $32.0 million. The actual value of the settlements is dependant upon the per share of the Company's stock when the claims process has been completed and could be as much as $42.7

million (which would be reached if the stock were trading at $18 per share).

Securities and Exchange Commission. During 1985, the staff of the Securities and Exchange Commission continued to conduct an inquiry originally commenced on an informal basis in July 1983, and conducted subject to a formal order of investigation after February, 1984. The inquiry focused primarily on the accounting treatment accorded to certain transactions involving the purchase and resale of company's subsidiary American (formerly State) Savings and Loan Association in 1980 and 1981, although other issues were raised. The company has been advised by the Staff that the Staff does not currently intend to make any enforcement recommendation with respect to any matters covered by the

inquiry.

In addition, on April 9, 1985, the Securities and Exchange Commission issued an order directing the Staff to conduct a private investigation into the company's practices in establishing loan loss reserves. The investigation focuses on the period from 1980 to the present and pertains to the financial condition of the Company, the results of its operations and its assets and liabilities. The investigation is continuing and the Company is cooperating with the Staff in producing the documents with documents and records requested.

ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

Financial Condition

. . . Stockholder equity totaled $230 million at December 31, 1985, which represented 0.84% of consolidated assets. Stockholder's equity was $194 million, or 0.68% of consolidated assets, at December 31, 1984 . . .

Cost reduction programs decreased general and administration expenses by $92 million. Operations also included provisions for losses on loans and real estate and a settlement of certain litigation of $222 million for the year...

Results of Operations

General

The company had net income of $53 million in 1985, compared to a net loss of $590 million and reported net earnings of $172

million for the years 1984 and 1983 respectively. The results of operations in 1985 include gains on the sales of loans of $350 and a 222 million provision for losses on loan and real estate and a loss provision to cover settlement of certain outstanding litigation. The results of operations for 1984 include a $422 million provision for losses on loans and real estate. The company has not determined what part, if any, of the 1984 reserve for losses may have related to prior periods. The 1984 operating loss also reflects intense competition in mortgage lending and prevailing mortgage rates, which generally lagged behind the Company's rapidly rising cost of funds.

Expenses

General and administrative expenses

decreased to $326 million in 1985 from $418 million in 1984. Such expenses amounted to $189 million in 1983. The decrease in expenses in 1985 is attributable to a reduction of workforce, decreasing in number of Company automobiles, disposal of all Company airplanes and a continuation of the cost reduction program started in the fourth quarter of 1984. . .

The provision for losses and discounts decreased to $222 million for 1985 compared to $516 million and $45 million in 1984 and 1983 respectively. The 1985 provision consists primarily of $182 million for estimated losses on loans and real estate and resulted from a review by the Company of its real estate and real estate loans. In addition, the Company provided a provision to cover the

estimated costs of settling certain litigation.

ASSETS

	1985
. . .	
Loans Receivable, net. . .	$14,974,246
Property acquired in settlement of loans. . .	930,926
. . .	
TOTAL ASSETS	$27,374,935
. . .	
TOTAL LIABILITIES	$27,145,207
TOTAL STOCKHOLDER EQUITY	229,728
. . .	
TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY	$27,374,935

Pursuant to the requirements of Sections

13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Irvine, State of California, on the 25th day of March, 1986.

Financial Corporation of America
(Registrant) By: William Popejoy
Chairman of the Board and Chief Executive Officer.

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the Registrant and in the capacities and on the dates indicated.

Signature	Title	Date
WILLIAM POPEJOY,	Chairman of the Board and Chief Executive Officer.	March 25, 1986
VICTOR H. INDIEK,	Executive Vice President,	March 25, 1986
ANNELISE G. ANDERSON,	Director	March 25, 1986
ROBERT M. BARTON,	Director	March 25, 1986
MERRILL BUTLER	Director	March 25, 1986
EDWARD L. JOHNSON,	Director	March 25, 1986
THOMAS P. KEMP,	Director	March 25, 1986
LAWRENCE K. ROOS,	Director	March 25, 1986
J. RALPH STONE,	Director	March 25, 1986
CHARLES E. YOUNG	Director	March 25, 1986

[End Pertinent Sections copied from:]
SECURITIES AND EXCHANGE COMMISSION
FORM 10-K

[From Barnes Exhibit 3; Appellees' From The United States District Court For the Northern District Of California; Case C-89-2486-MHP]

EXHIBIT D-17 FOR IDENTIFICATION
BARBARA VOLZING N.P.
DATE 11-9-89

[Thurston Exhibit 20; Appellees' Supplemental Excerpts of Record On Appeal; United States Court of Appeals for the Ninth Circuit; Case No. 90-15847. From The United States District Court For the Northern District Of California; Case No. C-89-2486-MHP]

[EXHIBIT D-178 FOR IDENTIFICATION; JOANN WEBER N.P.; DATE 11-9-89; DEPO OF John Turner; DEFENDANTS EXHIBIT D-178]

LEVEL 1 - 8 OF 8 STORIES

Copyright (c) 1985 The New York Times Company; The New York times October 9, 1985, Wednesday, Late City Edition

SECTION: Section D; Page 1, Column 3; Financial Desk; Length: 1323 Words

HEADLINE: FINANCIAL CORP.'S CLIMB BACK

BYLINE: By Thomas C. Hayes, Special to the New York Times

DATELINE: LOS ANGELES. Oct. 8

BODY:

Since William J. Popejoy succeeded Charles W. Knapp as chairman of the

troubled Financial Corporation of America in August 1984, the company has benefitted from a three-percentage-point drop in short-term interest rates. That decline has brought record profits to many of Mr. Popejoy's large competitors in California. However, for the Financial Corporation and its main subsidiary, the American Savings and Loan Association - the nations's largest thrift institution - it has not been enough.

And the company is still vulnerable if interest rates head upward. Mr. Popejoy agreed with the projection by Jonathan E. Gray, an industry analyst with Stanford C. Bernstein & Company, that it would take less than a year for a one-percentage-point rise in short term rates to erase the Financial Corporation's thin

LEXIS NEXIS LEXIS NEXIS

supply of capital if the company did nothing different to generate profits or reduce interest expenses.

"But if we didn't do anything we should be fired." Mr. Popejcy added.

He noted that the Financial Corporation had been collecting fees from new mortgages, employing interest rate swaps, hedging on interest rate futures and issuing mortgage backed securities to ease the threat of rising rates.

Unusual Bet

Mr. Knapp, who built the Financial Corporation into the nations biggest thrift institution, attracted widespread attention with his unusual bet. As other savings and loan associations withdrew from the mortgage market when interest

LEXIS NEXIS LEXIS NEXIS

rates rose in the 1970's, the financial corporation's thrift subsidiary, then called state Savings and Loan, actively issued mortgages, paying high prices in the marketplace for the necessary funds. The yield on its mortgage portfolio was among the highest in the industry, but so was its costs of funds.

In the course of growing 40 percent a year, however, Mr. Knapp was also accumulating high expenses and a mountain of bad real estate loans, which contributed to the thrift institution's subsequent problems.

In 1983, the Securities and Exchange Commission questioned the company's accounting practices, and forced it to reduce its 1982 earnings.

LEXIS NEXIS LEXIS NEXIS

In August 1984, American Savings and Loan faced a hugh deposit outflow when the S.E.C forced it to restate its first-half earnings of $75.3 million to a loss of $79.9 million. Last April, after reporting a staggering loss of $422 millon for 1984, the largest ever for a thrift institution, the financial corporation was paying as much as a full percentage point above the competition to attract deposits.

Mr. Knapp described his departure following a two-week, $6.8 billion run on deposits last year as voluntary, but he was said to have come under pressure from Federal regulatory authorities to step aside. He has not bowed out of the financial arena, however. He now heads a multifaceted investment concern called Trafalgar Holdings Ltd., based in Los

LEXIS NEXIS LEXIS NEXIS

Angeles, that has participated as an investor in some major takeover battles.

Corporate Jets Gone

The financial Corporation, however, is pursuing a consciously more conservative course now. In the 14 months since he succeeded Mr. Knapp, Popejoy has moved quickly to cut costs. Mr. Popejoy, who is the former head of the Federal Home Loan Mortgage Corporation, and president and chief executive of American Savings before it was acquired by the Financial Corporation in 1983, has jettisoned the fleet of nine corporate jets and 600 cars, and moved the company into modest offices in Irvine, Calif. He has also pared the company's annual operating budget by nearly $100 million, to $300 million, and has cut employment to 5,300

LEXIS NEXIS LEXIS NEXIS

from more than 8,000.

For all his efforts, however, Mr. Popejoy, has not been able to deal with some of the Financial Corporation's basic problems. It is still vulnerable to a rise in interest rates because about 90 percent of American Savings' mortgage assets still carry fixed rates, while about 85 percent of the interest paid on deposits and borrowings change within a year or less. Moreover the company receives no revenue at all on $1.8 billion in foreclosed property and other loans.

Back in the Black

Last Spring, Mr. Popejoy said the company would become profitable when the difference between what it earns on mortgages and other investments and what

it pays on deposits and debt exceeded 2.5 percentage points. The financial Corporation moved into the black at the end of August with an asset yield of 11.81 percent and a cost of funds at 9.22 percent, a spread of 2.59 percentage points.

Despite the continued risks, Mr. Popejoy, who is 47 years old, clearly has fans. Charles Mills, for example, a special situation analyst at Scott Stringfellow, a regional brokerage concern in Richmond, said his firm had purchased 2.7 million, or about 7 percent, of the Financial Corporation for its clients during the past 12 months. He said he anticipated that short term interest rates would fall another percentage point by early 1986 enabling the financial Corporation to earn $4 a share from operations next

LEXIS NEXIS LEXIS NEXIS

year.

"It's probably the most explosive, speculative stock on the New York Exchange," Mr. Mills said. "But every day that goes by, the spread gets even bigger. If he has enough time, Popejoy can survive the next upswing in rates."

Financial Corporation's stock closed a $5.75, unchanged, on the New York Stock Exchange today, marginally above the low of $4.375 it had reached on its darkest day, Aug. 16, 1984, after the S.E.C forced the earnings restatement.

Some Applause

The Federal Home Loan Bank Board has said it is pleased by Mr. Popejoy's conservative stewardship of the Financial

Corporation, and is not pressing him to meet the minimum net worth requirement of 4 percent. The Company's net worth, calculated according to regulatory requirements that include subordinated debt plus equity, was $303 million at the end of June, or barely 1 percent of its total liabilities.

Bank board officials declined to comment on what plans, if any, exist for a bailout of the Financial Corporation if rising interest rates force losses that wipe out its capital. Mr. Popejoy said the issue may have been explored in Washington, but added, "I have not been part of those discussions."

Mr. Popejoy said the company was on schedule in meeting his goal of writing $3.5 billion in new mortgages, split

LEXIS NEXIS LEXIS NEXIS

evenly between fixed and adjustable rates, in 1985. It originated $439 million in mortgages in August, putting this year's total at $1.8 billion. It has also sold nearly $200 million of its bad loans, and Mr. Popejoy is striving to sell a total of $600 million by the end of the year.

Mr. Popejoy, however, can ill afford to unload the property at too much of a discount, since a series of fire sales could quickly use up the company's hugh loss reserves. They totaled $449.4 million at the end of August, down slightly from July.

"If we sell assets at a loss, it would just exacerbate our problems," he said. The company's reserves appear to be "adequate" based on the discounts on

LEXIS NEXIS LEXIS NEXIS

foreclosed property sold so far in 1985, he added.

Unfinished Business

Mr. Popejoy still has unfinished tasks ahead, including further reductions in the company's mortgage portfolio if rates go lower and in the portion of costly funds purchased in the money markets.

Clearly, however, the Financial Corporation has regained much of the confidence it had lost with depositors. It recently was paying slightly less to attract six-month deposit than a few highly profitable competitors in California, according to Robert K. Heady, publisher of the Bank Rate Monitor, of North Palm Beach, Fla.

LEXIS NEXIS LEXIS NEXIS

Mr. Popejoy takes pride in his progress, but is not yet ready to pronounce the institution home free.

"We've held the company together for our shareholders and depositors," Mr. Popejoy said. "The longer we can do that, the better our chance to collect on the interest rate bet."

Graphic: graph of Financial Corporation's struggle; photo of William J. Popejoy (NYT/Lacy Atkins) (c) 1985 The New York Times, October 9, 1985

SUBJECT: Company and Organization Profiles

ORGANIZATION: FINANCIAL CORP OF AMERICA

NAME: HAYES, THOMAS C; POPEJOY, WILLIAM J

[END OF NYT STORY OCTOBER 9, 1985]

LEXIS NEXIS LEXIS NEXIS

[Thurston Exhibit 21; Appellees' Supplemental Excerpts of Record On Appeal; United States Court of Appeals for the Ninth Circuit; Case No. 90-15847. From The United States District Court For the Northern District Of California; Case No. C-89-2486-MHP]

[EXHIBIT D-179 FOR IDENTIFICATION; JOANN WEBER N.P.; DATE 11-9-89; DEPO OF John Turner; DEFENDANTS EXHIBIT D-179]

LEVEL 1 - 4 OF 8 STORIES

Copyright (c) 1985 The New York Times Company; The New York times October 24, 1985, Thursday, Late City Edition

SECTION: Section D; Page 23, Column 1; Financial Desk; Length: 410 Words

HEADLINE: FINANCIAL CORP. NET IS $12.3 MILLION

BYLINE: Special to the New York Times

DATELINE: LOS ANGELES. Oct. 23

BODY:

The Financial Corporation of America today reported income in the third quarter of $12.3 million, or 22 cents a

share, on revenues of $781 million.

While the earnings were cut sharply by a $25.6 million addition to loan loss reserves because of sluggish conditions in the real estate market, William J. Popejoy, Financial Corporation's chairman, said that the company is operating profitably for the first time in seven quarters. Although the company had net income in the 1984 quarter of $1.2 million on revenues of $863.5 million, the profit resulted from the sale of assets.

No Breakdown of Results

The company did not, however, provide a breakdown of profits from operations, as distinct from nonoperating gains.

LEXIS NEXIS LEXIS NEXIS

The additional loan loss reserves were taken because of an increase in delinquencies and foreclosures on single family mortgages, Mr. Popejoy said, although favorable interest rates allowed the parent company, the American Savings and Loan Association, to turn an operating profit for the quarter. "The overbuilt new and used condominium market is a particular problem," Mr. Popejoy said in a statement.

He added that the company was trying to dispose of its $1.7 billion in nonperforming assets as quickly as possible, and has sold $266 million in foreclosed and investment real estate so far this year.

Primary Earnings Spread Up

LEXIS NEXIS LEXIS NEXIS

The Company's primary earnings spread, or the difference between the yield of its assets and what it pays on deposits and debts, increased to 2.68 percentage points at Sept. 30. Financial Corporation rose above its break-even point of 2.5 percentage points in August, and increased its lending volume for the quarter to $1.5 billion in loans and mortgage-backed securities that generated $16.1 million in loan fees. Although about 40 percent of the loans originated in the quarter have adjustable rates, fixed rate loans still account for about 90 percent of the company's portfolio.

Wall Street analysts said that the lower cost of funds and increase in loan volume were positive signs, but said that the vulnerability of the nation's largest thrift institution to rising short-term

LEXIS NEXIS LEXIS NEXIS

interest rates had not changed.

"Financial Corporation's exposure to interest rates is still very large," John Jonathan E. Gray an analyst with Sanford C. Bernstein & Company, said. "A one-point change up or down in rates could double the company's net worth or exhaust it, in less than a year.

SUBJECT: COMPANY REPORTS

ORGANIZATION: FINANCIAL CORP OF AMERICA

[END OF NYT STORY OCTOBER 24, 1985]

LEXIS NEXIS LEXIS NEXIS

[Thurston Exhibit 16; Appellees' Supplemental Excerpts of Record On Appeal; United States Court of Appeals for the Ninth Circuit; Case No. 90-15847. From The United States District Court For the Northern District Of California; Case No. C-89-2486-MHP]

[EXHIBIT D-172 FOR IDENTIFICATION; JOANN WEBER N.P.; DATE 11-9-89 DEPO OF John Turner; DEFENDANTS EXHIBIT D-172]

LEVEL 2 - 1 OF 1 STORY

Copyright (c) 1986 McGraw-Hill, Inc.;

Business Week; March 10, 1986

SECTION: TOP OF THE NEWS; Corporate Cash; pg. 34; LENGTH: 643 Words

HEADLINE: FCA STILL HAS TO LIVE UP TO ITS STOCK PRICE

BYLINE: By Teresa Carson in Los Angeles

BODY:

Wall Street Jokesters still call it Financial Corpse of American. Yet the stock price of the nation's largest savings and loan association has tripled in the past 12 months to $15 per chair (chart). Investors accurately perceive that Financial Corp. of America benefits

tremendously from the recent plunge in interest rates. But they seem to have forgotten that the hugh problems that pushed it to the brink of failure only 18 months ago persist.

"Its a crazy price," says one investment banker. Another says investors can't possibly be betting on FCA's actual prospects but must be simply counting on their own intuition to sell at a profit before others do the same. "It is just a case of the greater-fool theory," he says.

DOUBLE WHAMMY. FCA Chief Executive William J. Popejoy admits the stock price makes him a little nervous. Although Popejoy has made significant progress, he says FCA's turnaround will take three to five more years. I hope expectations aren't getting too high," he frets. Popejoy is struggling to recover from the double whammy dealt to FCA by

former Chief Executive Charles Knapp , who resigned under fire in August, 1984. Knapp built FCA into the nations biggest thrift by betting big that interest rates would not rise dramatically: He took in short term deposits, paying top market rates, while making stacks of long-term loans at fixed rated. That strategy left FCA with a pile of bad loans from having expanded too quickly -- and vulnerable to a rise in interest rates.

As rates drop, investors reason that FCA should make more money. And it will: The fixed yields on its old mortgages become more attractive, making FCA's interest margin wider and the mortgages more salable. Sales of fixed-rate assets produced a profit of $53.3 million, or $1.01 per share, in 1985. And analysts say FCA could earn as much as $6 per share in 1986. But investors won't see much payoff for years: Any profits will

be plowed back into FCA's capital account, which is still $980 million short of its regulatory capital requirement.

Analysts also worry that if rates go up, FCA will be back in the soup. Popejoy managed to reduce FCA's vulnerability to changes in short-term interest rates -- its asset-liability gap -- from 70% to 59% in 1985. And he says he can do as well again this year. But analysts wonder if the drop in rates will last long enough for him to transform FCA's balance sheet for the long haul. "Even with today's rates, I'm not sure the company can restructure sufficiently," says Jonathan E. Gray of Sanford C. Bernstein & Co.

The market also seems to be ignoring FCA's problem loans. Troubled assets rose to $1.7 billion, or 6.8% of assets, at yearend. "asset quality continues to

be a big unknown," says Jerome I. Baron of First Boston Corp. FCA has some loans in oil-patch real estate, for instance, which can only become shakier as oil prices drop.

Regulators have apparently stymied Popejoy's desire to split FCA into a "clean" S&L and one with questionable assets. He hoped a split would speed the workout of problem loans, cut the funding costs, and maybe make it easier to sell capital or the entire institution. "I give it a 50-50 chance now," he says. Even without the split, Popejoy hopes to sell $600 million of foreclosed real estate this year and expects troubled assets to dip to $1.5 billion.

Analysts acknowledge that Popejoy has made considerable progress at FCA. "He's played out the hand that Charlie [Knapp] dealt him as well as anyone could, says Gray. But most feel FCA

still has too far to go to warrant such enthusiasm for its stock. "How do you place a multiple on a company like this?" Gray asks. The only answer these days is FCA is worth whatever someone is willing to pay. For the moment at least, that is around $15 per share.

GRAPHIC: Chart, FINANCIAL CORP.'S STOCK RIDES UP, DATA: FINANCIAL CORP. OF AMERICA, PATRICE CAIRE

[END OF BW STORY MARCH 10, 1986]

[Thurston Exhibit 23; Appellees' Supplemental Excerpts of Record On Appeal; United States Court of Appeals for the Ninth Circuit; Case No. 90-15847. From The United States District Court For the Northern District Of California; Case No. C-89-2486-MHP]

[EXHIBIT D-24E FOR IDENTIFICATION; JOANN WEBER N.P.; DATE 11-6-89 DEPO OF John Turner; DEFENDANTS EXHIBIT D-24E]

IN PROBLEM LOANS DESPITE ITS FORECASTS

By Kathleen A. Huges; Staff Reporter of The Wall Street Journal

DATE: April 1, 1986

IRVINE, Calif. - Financial Corp of America, parent of the nation's largest

thrift, disclosed that its problem-loan portfolio continued to grow this year despite the company's earlier forecasts that bad loans would level off.

In a filing with the Securities and Exchange Commission, the company said the problem-loan portfolio, including foreclosed property, climbed to $1.98 billion at the end of February from $1.75 billion at Dec.31

Financial Corp. also disclosed that it restructured another $761.4 million in loans last year to avoid delinquency or foreclosure. The restructuring included $36.5 million in interest-rate concessions last year.

The company said its outside auditors, Peat, Marwick, Mitchell & Co., issued an unqualified opinion after qualifying its opinion of Financial Corp.'s 1984 Annual Report. However, a Peat Marwick spokesman said the

unqualified opinion resulted from a letter of support for Financial Corp.from the Federal Home Loan Bank Board, which promised to "continue to provide support for the company . . . to enable it to continue as a going concern.

The increase in problem loans is a potentially heavy blow to Financial Corp.'s effort to regain its financial health. After a period of very rapid growth Financial Corp. was hurt badly by a growing amount of delinquent loans and real estate in foreclosure. Rising interest rates also weakened the thrift company, which had made many long-term loans funded with short-term deposits. Depositors responded in 1984 by withdrawing hugh amounts from their accounts.

The increase in problem loans is blow to the credibility of William Popejoy, Financial Corp.'s chairman. Mr.

Popejoy repeatedly predicted Financial Corp.'s problem loans wouldn't exceed $1.8 billion. Mr. Popejoy wasn't available for comment yesterday, but a spokeswoman said, "it was bad forecasting on our part."

The spokeswoman said the increase resulted from "certain large construction loans that became delinquent" but said she couldn't be more specific. She also declined to estimate when the increase in problem loans might stop or to say whether the company is likely to increase its loan-loss reserve. "Its something we're continuing to evaluate," she said.

In its restructuring of the $761.4 million in loans, Financial Corp. said it also agreed to lend an additional $121.6 million, presumably to help borrowers make payments.

The Bank Board Letter, dated March 24 and included in the filing, says the

regulators will take action to enable the company to obtain longer-term Federal Home Loan Bank advances and that the Bank Board will permit "prudent additional branching."

The letter notes that Financial Corp. isn't in compliance with regulatory net worth requirements and doesn't have fidelity bond insurance, which is required under federal regulations. However the letter says the Bank Board won't take any supervisory action based solely on those two violations. The letter also says the regulators support the company's efforts to restructure its balance sheet, maintain profitable operations and augment its net worth.

Though the Bank Board has consistently supported the efforts of Mr. Popejoy and his management team, Sam Yellen, a Peat Marwick partner, said the unqualified opinion resulted from the

"supportive letter issued by the Bank Board,"

The SEC filing said the company is still making mostly long-term fixed-rate loans with a primarily short-term deposit base, which leaves it vulnerable to rising interest rates. The filing says that last year Financial Corp. originated and bought a total of $3.3 billion of loans. Of those, $1.7 billion were in residential fixed- rate mortgages. A company spokeswoman said 88% of Financial Corp.'s loan portfolio is in fixed-rate instruments.

The company also said 68% of its deposits had maturities of six months or less as of year's end.

In 1984, the thrift posted a loss of $590.5 million, the largest loss ever for a thrift. But in January, the company reported a profit for 1985 of $53.3 million, or $1.10 a share, despite an

operating loss of $65 million. The 1985 results included a large tax-loss carry forward and hugh gains on the sale of securities.

At Dec. 31, Financial Corp had assets, mostly loans, of $27.3 billion.

[END OF WSJ STORY APRIL 1, 1986]

EXHIBIT D-24E FOR IDENTIFICATION
JOANN WEBER N.P.
DATE 11-6-89
DEPO OF John Turner
DEFENDANTS EXHIBIT D-24E

[Thurston Exhibit 40; Appellees' Supplemental Excerpts of Record On Appeal; United States Court of Appeals for the Ninth Circuit; Case No. 90-15847. From The United States District Court For The Northern District Of California Case No. C-89-2486-MHP]

[EXHIBIT D-28 FOR IDENTIFICATION; Barbara Volzing N.P.; DATE 11-7-89; DEPO OF John Turner; DEFENDANT'S EXHIBIT D-28]

Financial Corp. View
June 12, 1986
Special to the New York times
Nicholas D. Kristof

IRVINE, Calif., June 12 -- The Chairman of the Financial Corporation of America said today that problem loans would rise, possibly substantially, and that the company was unlikely to show an operating profit until at least the end of this year

This bleak assessment by William J. Popejoy, who had been struggling to save the troubled savings and loan company since August 1984, contradicts widespread speculation that the Financial Corporation's worst loan problems were behind it and that profitability was on the rise.

Mr. Popejoy conceded that part of the blame lay with his erroneous estimate

last year that "scheduled items" such as delinquent loans and foreclosed property would peak at about $1.8 billion. They are now around that level-- after reaching nearly $2 billion at one point during the first quarter -- but he said today they "could go substantially higher." He declined to be more specific, citing the inaccuracy of his past predictions.

A rise in scheduled items would mean that the company is foreclosing on property even faster than it is selling it. A newly formed real estate unit will sell about $600 million in property this year, Mr. Popejoy said, but cannot keep up with the rise in foreclosures. He attributed the unexpected rise in problem loans to economic difficulties in oil dependant states, poor estimation by the company of the severity of its portfolio problems, and to regulatory changes that

broaden the definition of scheduled items.

In an interview in the company's headquarters here, an hours drive south of Los Angeles, Mr. Popejoy added: "It's going to be difficult for us to have operating profitability for some time I hope to return to an operating profit by the end of the year, but it's a hope."

The Financial Corporation, which is the parent company of the American Savings and Loan Association, one of the nations largest thrift institutions, reported a modest operating profit in the third and fourth quarters of 1985, feeding speculation that it was in the midst of a lasting turn around.

In the first quarter of 1986 it reported a $7.2 million operating loss, although the sale of securities and a tax-loss carry forward resulted in a net income of $49.1 million.

Mr. Popejoy said he believed that Financial Corporation was still on the mend after a 1984 loss of $590.5 million that set a record in the thrift industry. He noted, for example, that the company was reducing it's sensitivity to any rise in interest rates, although that remained a big potential problem. But the progress was gradual, he said.

'No Quick Fix'

"There is no quick fix for this company that I can see, unless we are acquired by a major corporate entity." Mr. Popejoy said. "Otherwise we're talking about a five-year process." He said he would favor being acquired by a large corporation that could provide an infusion of capital to bolster the Financial Corporation's thin supply, which is below regulatory requirements.

The Financial Corporation is a

legend in the financial world, almost as much for its meteoric rise in the early 1980's as for its sudden near collapse in mid 1984, leading to a run on deposits and the arrival of Mr. Popejoy.

In the interview, Mr. Popejoy said that a committee investigating past company policies may give its report later this year, both to the company's board and to Federal regulators.

Mr. Popejoy also said that the company was cooperating with the Federal Bureau of Investigation and a grand jury, which are looking into the thrift institution's lending policies in the period before the current management was hired.

THE NEW YORK TIMES JUNE 13, 1986

[END NYT STORY JUNE 13, 1986]

EXHIBIT D-28 FOR IDENTIFICATION
Barbara Volzing N.P.
DATE 11-7-89
DEPO OF John Turner
DEFENDANT'S EXHIBIT D-28

[Thurston Exhibit 43; Appellees' Supplemental Excerpts of Record On Appeal; United States Court of Appeals for the Ninth Circuit; Case No. 90-15847. From The United States District Court For The Northern District Of California Case No. C-89-2486-MHP]

[EXHIBIT D-30 FOR IDENTIFICATION; BARBARA VOLZING N.P.; DATE 11-7-89 DEPO OF John Turner; DEFENDANT'S EXHIBIT D-30]

Unit of Financial Corp. of America Sets $3 Billion Swap Pact

By a Wall Street Journal Staff Reporter

July 15, 1986

IRVINE, Calif. -- Financial Corp. of America said its American Savings & Loan Association Unit signed an option agreement to swap $3 billion in home mortgages for a like amount of Federal Home Loan Mortgage Corp. mortgage-participation certificates.

This agreement calls for the mortgage corporation, known as Freddie Mac. to buy fixed-rate mortgages on single family homes from American Savings during the next 18 months, in exchange for participation certificates.

American Savings could sell the certificates to other corporations and, Financial Corp. said, the arrangement

will help increase the liquidity of its unit, the nation's second largest thrift.

Freddie Mac. a publicly chartered corporation that buys mortgages from thrifts and packages them for resale to investors, said the transaction is the largest single swap it has arranged.

It added that it had bought $164 billion in mortgages and sold $151 billion in mortgage securities since being created in 1970.

Financial Corp. said the swap also was its single largest transaction, although it has frequently entered into similar swap arrangements with Freddie Mac and other publicly chartered financial corporations.

A financial Corp. spokeswoman said the instruments to be swapped won't include any of the problem loans that have plagued the thrift holding company.

In April, Financial Corp. said its

problem-loan portfolio climbed to $1.98 billion at the end of February from $1.75 billion Dec. 31. Separately, Financial Corp. said its thrift unit began offering $200 million of European collateralized floating-rate notes due 1996.

Merrill Lynch Capital Markets is the lead underwriter.

[END OF WSJ STORY JULY 15, 1986]

Subsidiary of Financial Corp. of America Lifts Sales of Real Estate

WSJ 7-16-86

By a Wall Street Journal Staff Reporter

IRVINE, Calif. -- Financial Corp. of America said its thrift unit sold $200.5 million of foreclosed real estate in the second quarter, up from sales of $84.4 million in the first quarter.

The real estate was part of American Savings and Loan Association unit's problem-loan portfolio, which climbed to $1.92 billion at May 31 from $1.79 billion in January. June figures aren't yet available, and the company declined to comment on whether the portfolio showed an overall decline as of June 30. The problem loan-portfolio, mainly consisting of slow paying loans and foreclosed property, is the largest of any thrift.

William J. Popejoy, chairman of Financial Corp., has estimated that the thrift will sell $600 million of real estate this year. So the total $284.7 million sold in the first half is in line with expectations.

Financial Corp. said it has an additional $135 million of real estate in escrow. The company attributed the higher sales rate in the second quarter

to a favorable real estate environment and stepped up sales efforts. The company noted, however, that January and February usually are slow months for the sale of real estate.

[END OF WSJ STORY JULY 16, 1986]

[the following was written in long hand under the article]

July 15th, 1986

Bullish news for FIN

65,000 shares continues to be a hold. 2 year range $30 $36 per share value $2,340,000 value @ $36 share vs 612,000 cost. Potential gain at $36 > $1,728,000 less cost to hold > Interest on margin of $300,000 x 10% $30,000 per year.

EXHIBIT D-30 FOR IDENTIFICATION; BARBARA VOLZING N.P.; DATE 11-7-89 DEPO OF John Turner; DEFENDANT'S EXHIBIT D-30

[Turner Exhibit 4; Appellants' Excerpts of Record On Appeal; United States Court of Appeals for the Ninth Circuit; Case No. 90-15847. From The United States District Court For The Northern District Of California Case No. C-89-2486-MHP]

[LOGO+] FINANCIAL CORPORATION OF AMERICA

October 28, 1986

Dear Shareholder:

In addition to your Company's third quarter 1986 results, we've enclosed for your information a recently reprinted news story on Financial Corporation of America from the "American Banker," the daily newspaper of the banking and financial services industry.

In particular, please note that FCA now has produced five consecutive quarters of profitability, and that American Savings' regulatory capital has increased to $527.6 million. Also , in regard to the company's ongoing efforts to review the loan portfolio, the company hopes to avoid a large year-end addition to its reserves by reviewing significant portions of its loan portfolio in each of

the second, third and fourth quarters of 1986. The company's goal is to identify and evaluate new problem areas as soon as reasonably practicable.

If you have any questions, please write or phone me at (714) 553-6930.

Thank You, s/ Layna J Browdy

Director of Corporate Communications

LJB/dg

[FOOTER] Financial Corporation of America, 18401 Von Karman Avenue, P.O. Box 19639, Irvine, California 92713-9689, (714)553-6900

[ARTICLE ATTACHED TO LETTER]

[HEADER] American Banker

The Daily Financial Newspaper Established 1836; September 22, 1986

[LOGO] Corporate Strategy

[HEADING] Financial Corp.'s Popejoy Upbeat About Thrift's Future Health

[SUB-HEADING] After Veering Close to Failure's Edge, Nation's Largest Thrift Company Swings Back Toward Growth

By MARK BASCH

[BODY] IRVINE, Calif. -- If William J. Popejoy has his way, the troubled Financial Corporation of America will be a healthy, vibrant, and -- most significantly -- an independent institution three years from now.

The chairman, president, and chief executive officer of the nations largest thrift company said in an interview last week that the company is out of danger but still about three years from being financially sound.

"We're out of harm's way in my estimation," he said. "there's no longer talk of American Savings [Financial Corp.'s savings and loan subsidiary] failing. It's just now how long will it take for this company to fully regain the financial prominence it did prior to the FCA-First Charter merger in 1983."

American Savings and Loan Association was a subsidiary of the First

Charter Financial Corporation. American was merged into State Savings and Loan Association, a subsidiary of Financial Corp., in August 1983. Financial Corp. and American Savings were the surviving companies.

Although Financial Corp. has been the subject of merger rumors over the past year, Mr. Popejoy said he is hopeful that we will still be running the company as an independent institution in the future.

"In my heart of hearts, I hope we can go ahead independently," he said. "We had to do battle through the times of adversity. I'd like to be able to enjoy the fruits of our labors."

He also said he would welcome discussions with possible merger partners that would infuse much needed capital into the company. But "no such discussions have taken place," he said.

Financial Corp.'s problems began in 1984, when it had a loss of $590.5 million. Its ratio of net worth to assets plummeted to 0.68% at yearend 1984, and the company was saddled with $1.1 billion in scheduled items.

The company has been profitable since the end of 1985, but those profits have come mainly on the strength of the sale of loans and mortgage backed-securities.

"We have returned to strong profits, but those profits are from extraordinary income actions." Mr. Popejoy said. "We expect to have an operating income in the fourth quarter" of this year.

Although the earnings have increased net worth, the net worth ratio was still a low 0.98% as of June 30. Financial Corp. is beginning to explore other capital raising techniques, Mr. Popejoy said.

"We had an ongoing relationship with unidentified Wall Street firms regarding ways we can accelerate our rebuilding capital," he said. "It is a process that has begun," he said, but it will be at least several months before any results are seen.

Nonearning Assets a Problem

Besides capital growth, another key problem facing Financial Corp. is the large amount of nonearning assets. Scheduled items totaled $1.8 billion or 6.28% of assets at June 30.

Financial Corp. has created a subsidiary called American Real Estate Group, which has been attempting to dispose of problem real estate assets.

"We have in effect divided the company into two parts," Mr. Popejoy said. "Its a savings and loan and its a real estate company."

The real estate division sold $286 million in real estate in the first six months of this year, and should reach its goal of selling $600 million by year-end, Mr. Popejoy said. "No other financial institution and I don't think many of the other real estate companies have come close to selling that much real estate in a short period of time." He believes it will take three years for the real estate group to complete its job.

Financial Corp. had to add $156.4 million to its loan-loss reserves in the fourth quarter of 1985, and the company is hoping to avoid a large yearend addition to its reserves this year by reviewing its portfolio earlier in the year.

Mr. Popejoy said the company has been reviewing one-third of its portfolio each quarter this year, so the portfolio should be completely audited by the end

of the quarter. Potential decreases in real estate values, however, could still result in increased additions to reserves in the fourth quarter.

The company is also lowering its ratio of scheduled items through growth. Total assets had shrunk from $28.5 billion at yearend 1984 to $27.4 billion at yearend 1985. But over the first six months of this year, assets rose again to $29.2 billion.

"We believe [growth] is in our best interest because we've been growing with earning assets," Mr. Popejoy said. "We need earning assets to help carry our non earning assets until they have been sold off.

He said that since the company rebuilt its lending division in 1985, it has made 18,000 mortgage loans with less than 40 of those being more than 30 days delinquent. Although its still early to

judge that portfolio, "that's an astoundingly low number," he said.

Growth is Approved

Financial Corp. entered into an operating agreement with the Federal Home Loan Bank Board in August 1984, and it has been required to submit a quarterly business plan with the bank board. Although the Bank Board had originally encouraged the company to shrink, it has approved Financial Corp.'s growth this year.

"They've approved what we have one thus far, and that included some growth," Mr. Popejoy said.

The company has benefitted from lower interest rates, but is still very sensitive to increases in rates. Its one year gap, or the difference between assets and liabilities repricing within one year, is a high 35.4% of assets. But

Mr. Popejoy is pleased that the company has cut its one-year gap in half from 69.4% at June 30, 1985.

"I'm not going to be fully happy until we have a 6% net worth, a less-than-industry average scheduled items ratio, and a negative gap that is very close or maybe lower than our peer group," he said. "I think we can do all three of those within three years."

"From the very beginning we've indicated that there was no quick fix for FCA and American Savings," Mr. Popejoy said, adding that he had estimated it would take three to five years from the time he and a completely new management group took over the company in 1984. He feels the company is still on target to reach that goal by 1989.

"We're millenniums ahead of where we were a year and a half ago. At that time, it seemed like failure was

imminent. Now it doesn't even seem like it could be a consideration."

[INSERT] Photograph of Mr. William J. Popejoy with banner "In my heart of hearts, I hope we can go ahead independently. We had to battle through the times of adversity. I'd like to be able to enjoy the fruits of our labors. -- William J. Popejoy Chairman, Financial Corporation of America

[END AMERICAN BANKER ARTICLE SEPT 22,1986]

[THIS AMERICAN BANKER ARTICLE ALSO ENTERED INTO EVIDENCE AS:]

EXHIBIT D-34A FOR IDENTIFICATION
BARBARA VOLZING N.P.
DATE 11-7-89
DEPO OF John Turner
DEFENDANT'S EXHIBIT D-34A

[Thurston Exhibit 47; Appellees' Supplemental Excerpts of Record On Appeal; United States Court of Appeals for the Ninth Circuit; Case No. 90-15847. From The United States District Court For The Northern District Of California Case No. C-89-2486-MHP]

[Turner Exhibit 7; Appellant's Excerpts of Record On Appeal; United States Court of Appeals for the Ninth Circuit; Case 90-15847. From The United States District Court For the Northern District Of California; Case No. C-89-2486-MHP]

[Excerpts from the 1986 Annual Statement of Financial Corporation of America released in April 1987]

1986 Building a Stronger Financial Future

Building a Stronger Financial Future

Accomplishments from December 31, 1984 - March 31, 1987:

1. Produced two consecutive years of profitability following the largest loss ever reported by an S & L

2. Reduced the Company's interest rate risk, as measured by the One Year Negative Gap, by approximately two-thirds (One Year Negative Gap declined from 69.4% at mid-year 1985 to 24%)

3. Increased American Savings' regulatory capital by 85%. At March 31, 1987, about

$561 million--up from a low of about $303 million in mid-1985

4. Disposed of real estate totalling approximately $1.2 billion in book value

5. Added a total of over $1.2 billion to the reserve for losses on loans and real estate as a means of providing financial strength for quantifying future loan quality problems

6. Rebuilt the lending operation which since January 1, 1985 has produced approximately 26,000 high quality single family loans(one to four units) through our retail mortgage origination offices. (This excludes loans made to sell our real estate or special loans made to restructure pre-existing problem loans.)

7. Stabilized the deposit base and

dramatically reduced the premium paid on retail deposits

8. Restructured deposit base: Institutional deposits reduced from a high of about 55% at December 31, 1983 to 16% of the total deposit base

9. Increased the size and strength of the retail branch system by acquiring a total of 51 savings offices and $1.7 billion in retail deposits through March 1987, thus increasing the number of retail savings offices by 41%

10. Reduced the General and Administrative expenses by $92 million or 22% in just one year--1985 vs 1984. Disposed of nine company aircraft, 41 condos for staff use and approximately 650 company cars while restructuring the Company. During late 1984 and early

1985, reduced the staff by about 2,700 employees. Converted internal computer operations to an outside servicer for economies of operation, improved operational capabilities and customer service

11. Streamlined the organization and created greater accountability for results and performance at all levels of management

12. Settled a major class action law suit, thus removing a major financial concern regarding litigation

13. Assembled a new management team and restructured the FCA/American Savings board of directors

14. Created the American Real Estate Group, an entity of about 500 employees

staffed with real estate professionals, to apply a builder/developer approach to the Company's real estate disposition and management effort

The financial health of Financial Corporation of America and American Savings and Loan Association continued to improve significantly during 1986. We are encouraged by the many positive signs pointing to a strong recovery, although we recognize that there still is much to be done.

Your management team has set annual and loan term goals in all of the following areas, and in 1986 we made progress in each:

- Increased profitability.
- Reduced interest rate risk.
- Improved asset quality.

- Prudent growth.
- Real estate sales exceed goal.
- Reduced scheduled items.
- Increased regulatory capital.
- Improved deposit base stability.
- Vigorously competing for business.

Increased Profitability

FCA reported a net profit of $95.4 million for 1986, an increase of 79% over the 1985 profit of $53.3 million. In addition, the Company reported a 1986 fourth quarter profit of $23.1 million which included an operating profit of $18.9 million. This represents six consecutive quarters of profitability. While the Company produced an operating loss during the first three quarters of 1986, the losses decreased in size each quarter until the last quarter of the year when an operating profit was

recorded--the first in four quarters.

Reduced Interest Rate Risk

A primary goal since we assumed management of FCA has been to reduce the Company's interest rate risk. While taking steps to improve the Company's asset quality and enhance operating profitability, during 1986 we have strategically managed to reduce the Company's interest rate risk--significantly. In the savings and loan industry, a generally accepted measurement for determining interest rate vulnerability is the One Year Negative Gap--the difference between interest-sensitive assets and liabilities repricing in a one year period. Our One Year Negative Gap was a high 69.4% in mid-1985. In just 18 months, we reduced the ratio to 25.1% at December 31, 1986.

We cut it further to 24.0% at March 31, 1987.

This substantially lower gap indicate that the Company is far less vulnerable to rising rates than it was two years ago and should lessen concerns that the Company is borrowing short and lending long. FCA has shielded itself against much of the risk of interest rate fluctuations through interest rate swaps and hedging operations, techniques widely in use among leaders in the financial industry. (Discussion of this strategy follows in Note 17 of the "Notes to Consolidated Financial Statement"section.) Although we have achieved meaningful progress in this area within a short period of time, we are determined to lower the Company's interest rate risk further during 1987.

Improved Asset Quality

A financial institution is only as sound as its underlying assets. FCA's asset quality has improved measurably both through our retail loan origination program and through the controlled growth of our asset base. After I joined the Company in 1984, I decided to dismantle the lending operation then in place. I hired Michael Durkin, a prominent S&L industry executive with extensive experience managing quality lending operations. Under his direction as chief lending officer, a special team of expert internal loan auditors was put into place to police underwriting quality.

Through the year-end 1986, we have created 26,000 single family loans (one to four units), primarily on homes in California, through our retail mortgage origination offices. (This excludes loans made to sell our real estate or special

loans made to restructure preexisting problem loans.)

The high quality of such loan production is supported by two statistics. Less than 30 of those 26,0000 loans were even one month or more delinquent as of December 31, 1986. Perhaps even more impressive, the average loan to value ratio for those loans is less than 66%, well below the industry average of about 75%.

The other assets which we've added to the Company's balance sheet are mortgage securities backed by agencies or quasi-agencies of the Federal government--Ginnie Mae, Fannie Mae or Freddie Mac. These present little credit risk to this Company. Clearly, the assets added to our holdings in the last two years are of a very high quality.

Prudent Growth

FCA's assets stood at $33.95 billion, at December 31, 1986, a 3,2% growth on an annualized basis, from about $32 billion back in 1984.

During the first 18 months after I assumed the CEO post, our first priorities were to strengthen the Company's financial position and regain the confidence of customers and investors. We then realized that we needed a course of prudent growth to increase operating income and to reduce interest rate risk.

This growth was approved in advance by the Federal Home Loan Bank Board. Our growth was achieved through a dual strategy: to acquire mortgage-backed securities, which represent little or no

risk to the company, and to originate higher quality loans described above.

Our growth added to operating income, while at the same time, reduced our exposure to interest rate risk. For example, our assets grew from $29.2 billion at June 30, 1986 to $33.95 billion at December 31, 1986. This one year negative gap dropped from 35.4% at June 30, 1986, to 25.1% at December 31, 1986. By March 31, 1987 we pared it further to 24%.

Real Estate Sales Exceed Goal

Since mid-1985 American successfully sold over $1.2 billion in book value before reserves of inherited problem real estate. These dispositions escalated dramatically since May 1986, when we created the American Real Estate Group

(AREG), a division headed by Merrill Butler, a respected veteran of the real estate building/development industry and a former president of the National Association of Home Builders, AREG delivered outstanding results by year-end 1986. It disposed of real estate totaling $725.2 million in book value and exceeded the Company's $600 million 1986 sales goal by 2.1%. A dollar volume like this ranks AREG among the top real estate development companies in the nation. In fact, American Savings really functions as "two" companies--an S&L and a real estate company dedicated to turning non-performing assets into earning assets.

AREG had been most successful at selling single family homes and individual condominiums, with the majority of those sold located in California followed by Texas, Oregon,

Nevada and other sunbelt and oil-patch states.

In 1986, AREG achieved a 20% reduction from 1985 in the Company's inventory of real estate owned through foreclosure (REO) and real estate acquired for investment (REI). During the second half of the year, our real estate management and disposition specialists were able to dispose of problem real estate, from our inherited loan portfolio, much faster than the inflow of foreclosed properties.

Reduced Scheduled Items

We will continue our major thrust to reduce scheduled items (primarily foreclosed real estate and delinquent loans). In 1986, scheduled items were cut to $1.66 billion or 4.89% of total

regulatory assets at December 31, 1986 from $1.75 billion or 6.38% at December 31, 1985. The December 1986 scheduled items reduction was down 16% from a high of $1.98 billion at February 28, 1986.

During 1986, the Company added a total of $463.8 million to its previously established reserve for losses on loans and real estate. This addition brought the reserve to $799.7 million at year-end 1986. Since 1984, the Company has set aside approximately $1.2 billion in this reserve in a determined effort to quantify loan quality problems and build a strong reserve for the future.

Increased Regulatory Capital

Our profits have strengthened the Company's capital position, substantially. American Savings'

regulatory capital base has continued to improve and rose to $552 million at year-end 1986. This is an increase of 82% from a low of bout $303 million in mid-1985. With our credible record of recovery and given time to work out the remaining inherited problem assets, American Savings should reach the point where it can negotiate from strength for fresh private capital.

Increasing our capital base remains a top priority. One potential means of raising fresh capital could be through the issue of new shares to and/or the merger of the Company by another corporation.

Your management and directors would only consider such steps if it would create substantial fresh capital strength and would serve the best interests of our

shareholders customers and employees.

As we announced earlier, such talks have been extremely tentative in nature. We will always disclose promptly any new and important information.

Improved Deposit Base Stability

During 1986, we continue our program to reduce the Company's past dependance on volatile institutional deposits and to gain a more cost-effective, stable, manageable and dependable deposit base. The leading edge of this effort has been the Company's total acquisition to date of 51 retail branch offices and about $1.7 billion in deposits since the summer of 1985 through the first quarter of 1987. Located in California, these branch acquisitions have increased the strength and customer service

capabilities of our branch system by 41%.

The Company also continued to reduce the premium it had been paying on institutional deposits. The result of this two-pronged strategy was to reduce the Company's institutional deposit base from a high of about 55% at year-end 1983 to 17% three years later.

Vigorously Competing for Business

We continued to offer products and services which are desired by consumers, and we attract new customers while strengthening relations with current customers. With American's financial strength on the mend, we added a new plank to our program with our new "no negative amortization" ARM. However, we will continue to make available to our customers a fixed rate mortgage program -

- we believe the consumer should be offered a choice.

On the savings side of business, we will continue to seek appropriate opportunities to refine and strengthen our retail branch system. Shortly, we will introduce a new sales and service training program to every savings branch employee. This far reaching training effort will provide and reinforce a new attitude toward customers while totally changing the culture of our savings division. At the same time we are moving forward with new products and expanded research and development programs. With a new attitude, training and the best products and services available, we are preparing our employees for the 1990's and beyond. We expect this new training program will further enhance productivity and profitability.

We have come a long way together. We can look back and see our accomplishments and measurable improvement, which we achieved without tapping taxpayer dollars from the Federal Savings and Loan Insurance Corporation (FSLIC). But the job is not yet complete. We continue to appreciate your support and that of our employees and customers. We remain committed, single minded and determined in our drive for FCA's complete renaissance.

S/William J. Popejoy

Chairman of the Board

March 31, 1987

[End of Turner Exhibit 7; Appellant's Excerpts of Record On Appeal;]

[Turner Exhibit "E"; Appellants' Supplemental Excerpts of Record On Appeal; United States Court of Appeals for the Ninth Circuit; Case No. 90-15847. From The United States District Court For the Northern District Of California; Case No. C-89-2486-MHP]

[Excerpts from the 111 pages of the Proof of Loss containing 15 Schedules setting for details of losses in excess of $400 million]

PROOF OF LOSS

Proof of loss is hereby made on behalf of Financial Corporation of America (FCA) and each of its affiliates and subsidiaries as identified in the policies as an insured (hereinafter collectively referred to as the "Company") pursuant to the terms of Policies No: BM10016 (Mutual Fire, Marine and inland Insurance Company; JO 07 25 699 (Insurance Company of North America); and HF 6403460 (Fireman's Fund Insurance Company) for losses sustained by the Company in excess of $400 million.

Various components of the loss, and the conduct directly causing such loss, were discovered by the Company at various times following the resignation of the Company's former chief executive, Charles W. Knapp, on August 28, 1984 as a result of the receipt and evaluation of certain investigations undertaken by new management. Thus it is impossible to pin- point a particular "date" of "discovery" other than a general reference to the period commencing with the fourth quarter of 1984 through mid November 1985.

This Proof of Loss is being signed on behalf of the Company by William J. Popejoy, Chairman of the Board and Chief Executive Officer, who was appointed August 28, 1984. Because the events which are the basis of this claim occurred prior to commencement of his tenure with the Company Mr. Popejoy does

not have personal knowledge of much of the information presented herein and has relied heavily upon information provided from sources both within and without the Company's organization, including counsel for the Company and committees appointed for the purpose of investigating the past practices of former management and the nature and extent of the Company's losses. Accordingly, this Proof of Loss is being made on information and belief and represents the opinion of senior management of the Company with respect to the matters set forth herein.

As set forth in the accompanying Statement in Support of Proof of Loss and schedules (which are incorporated herein), the Company believes that much of its losses were as a direct result of conduct on the part of Charles W. Knapp, the Company's former Chairman and Chief Executive Officer, and certain former

officers, directors and employees of the Company, who aided , abetted and assisted Knapp in the formulation, implementation, and facilitation of Knapp's various schemes and strategies as described herein and who assisted in the concealment of such conduct from those members of the Board of Directors of the Company and its subsidiaries not in collusion with them. Such conduct is believed to be within the applicable Insuring Agreements of the Policies, including, but not limited to, the fidelity Insuring Agreement.

Additionally, separate claims are set forth with respect to conduct falling within the scope of other insuring agreements, including, but not limited to, the Forgery and All Risk Securities Insuring Agreements and (with respect to Mutual) the Servicing Contractor Riders. (Additional proofs of loss will be

provided with respect to other claims of the Company under the respective policies.)

The circumstances surrounding the occurrences of the losses are set forth in the accompanying Statement and Schedules. . . .

Financial Corporation of America

By: s/William J. Popejoy

Sworn to and subscribed before me on the 27th day of June, 1986, at Irvine, California
Monica D. Murray
Notary Public - California
Los Angeles County

STATEMENT IN SUPPORT OF THE PROOF OF LOSS

I. COMMON PLAN OR SCHEME

. . . Commencing as early as 1975-1976, Charles W. Knapp, the principal officer

of the Company, formulated and adopted a scheme and strategy to vastly increase the volume and scope of the Company's publicly reported earnings, assets, and activities in order to inflate the market price of its stock all for his own personal gain and self aggrandizement. At various times, and from time to time, from then until late August 1984, when Knapp resigned his positions with the Company, other officers, directors and employees of the Company knowingly assisted, aided and abetted Knapp by participation in the formulation, implementation and/or facilitation of the various strategies designed to further the scheme and/or in concealing the true facts from those members of the board of directors of the Company and its subsidiaries who were not in collusion with them . . .

Pursuant to this course of Conduct these officers caused the Company, among other things:

(a) To accelerate the generation and recognition of income wherever possible by various stratagems; and

(b) to undertake to postpone the recognition of losses whenever possible.

As an integral part of that strategy, these officers of the Company employed, as they deemed necessary and expedient (e.g., where generally recognized methods of prudent generation and recognition of income did not produce the desired results), artificial and improvident methods of achieving predetermined short-term profit goals which exposed the Company to an extraordinary risk of loss. In doing so, Knapp and these officers, directors and employees acted with a conscious and/or reckless indifference to the potential

long term consequences to the Company. In furtherance of this stratagem:

(a) Knapp and these officers generated a high volume of loan transactions with significant loan fees without adherence to adequate underwriting standards and utilizing appraisals of collateral securing the loans that had no reasonable factual support.

The bulk of these transactions, typically construction or other types of commercial loans, were structured with extensive reserves for payment of interest such that the transaction would be self serving for at least several earnings reporting periods regardless of the condition of the project or borrower at the time. Examples of such transactions as to which a loss has been recognized or as to which a reserve against potential losses has been set are

set forth in schedule 2.

In generating these loans, the Company often obtained higher than market rates of interest. However, these rates, extracted from borrowers because the Company very often was the sole source of funding available for these imprudent loans, were illusionary because the borrower (and/or the income from the proposed project) was incapable of repaying the loan or servicing the debt except through employment of an interest reserve. Another purpose of making these loans was to generate large amounts of origination fees which far exceeded the amounts that would have been paid by credit worthy borrowers.

. . . Further, pursuant to the common scheme, among other things, these officers,

(a) Restructured loans either without current appraisals or using

appraisals that were without any reasonable basis;

(b) Took action to prevent or discourage the generation of information by lower level employees that would have disclosed probable losses;

(c) Engaged in transactions (similar in concept to the Padre Island stock disposal scheme) that were designed to make it look as if the Company had disposed of problem loans and real estate when in truth and in fact the economic risks associated with these problem projects remained with the Company. Moreover, to accomplish this disposal, the Company was put at even greater risk due to the nature of the loans the Company had to make to facilitate these transactions.

. . . (2) To facilitate the disposal of such problem assets, the Company would

grant ancillary or accommodation loans to borrowers without adhering to normal underwriting standards. Ultimate authority for approval of such transactions was placed in the hands if one or more of these principal officers without review of the Senior Loan Committee of the Board of Directors. Frequently the problem loan purchase feature of the transaction was extracted from the borrower because the Company was the sole source of funding available to the borrower. The ancillary loans, which provided the down payment for the purchase of problem loans and real estate, also inherently presented a higher than normal risk of problems (especially if the ancillary loan was a construction loan) since the proceeds of the loans would be used for other than improvements on the property securing the loan.

. . . As a direct and proximate result of the scheme and plan described above to artificially increase the publicly reported earnings of the Company and to hide whenever possible any evidence of problems in the loan portfolio, numerous loans were made and purchased without utilizing proper underwriting standards. The departure from approved underwriting standards included making loans without appraisals, making loans utilizing appraisals known to be without any factual basis and totally bypassing the normal underwriting process.

As a direct result of the scheme and plan described above the Company has suffered damage in an amount in excess of $400 million. . . .

SCHEDULE 2

IMPROVIDENT LOANS

The following loans, among others,

are believed by this Company to have been made without adherence to adequate underwriting standards ad/or utilizing appraisals of collateral securing the loan that had no factual support. In the opinion of the Company, these do not encompass the entire universe of troubled loans within the Company's loan portfolio which are considered to be improvident. . .

Loss/reserve figures given with respect to particular projects represent, generally, information as of December 31, 1985. As more information becomes available, or projects are sold or paid off, these figures could become higher or lower. Some of the transactions identified on this and other schedules bear the notation that the Company is still in the process of quantifying potential/actual losses. As to these transactions further information will be

supplied when available. It should be pointed out that many of such transactions are currently in the process of debt restructure undertaken in an effort to mitigate the potential loss. These restructures can involve, among other things, waiver of accrued interest, discounted principal and/or interest, and/or modification in payment terms, all of which can result in a measurable loss to the Company. As these potential losses are quantified, the information will be provided . . .

[108 loans are then listed of which No. 13 was:]

(13) Rossi (Cannery Row). Loan Number 020-1006563 Total Loss/Loss reserve through 1985, $725,000

[End of selected excerpts from the "Proof of Loss" from:]

[Turner Exhibit "E"; Appellants' Supplemental Excerpts of Record On Appeal; United States Court of Appeals for the Ninth Circuit; Case No. 90-15847. From The United States District Court For the Northern District Of California; Case No. C-89-2486-MHP]

[Thurston Exhibit For The Defendants From The United States District Court For the Northern District Of California; Case No. C-89-2486-MHP]

Declaration of Richard B. Swinney

I, Richard B. Swinney, hereby declare as follows:

1. I am an attorney admitted to practice before all of the courts of the state of California and in-house counsel for New West Savings and Loan Association. I was a lawyer in the legal division of American Savings and Loan Association ("American") prior to its being placed into receivership by the Federal Home Loan Bank Board, at which time the Federal Savings and Loan Insurance Corporation was appointed receiver for American. I have been a lawyer for American and its successors/assignees since 1981. I have personal knowledge of the below matters, unless otherwise indicated. I am currently counsel for the New West Federal Savings and Loan

Association, in the position of Senior Litigation Counsel.

2. In the years from 1985 to the present, my job duties included supervision of the Cannery Row Plaza litigation and San Marino Savings and Loan Association litigation discussed herein. As part of that job, I was aware of the loan loss reserves established in connection with loans at issue in those actions.

. . . . .

6. As of July 12, 1986, a loan loss reserve of $2,510,970 was established in connection with the Cannery Row Plaza Loan.

7. As of July 1, 1987, the loan loss reserve was revised to $14,111,405 in connection with the Cannery Row Plaza Loan.

8. As of September 16, 1988,the loan loss reserve was revised to $21,465,231 in connection with the Cannery Row Plaza Loan.

. . . . .

Executed this 16th Day of January, 1990 in Irvine California

s/Richard B. Swinney

[END EXCERPTS FROM SWINNEY DECLARATION]

[From the Deposition of John Turner 11/6/89; Page 98, lines 14-26]

Q To get back to the point, though, is it your contention in this case that the loan loss reserve number appearing in the 10-Q's and 10-K's was inaccurate?

A I don't believe it was accurate at all.

Q Was there some piece of information in the proof of loss as to a dollar number that you feel was not reflected in the 10-Q's and 10-K's?

A The only one that I know anything about would be the Cannery Row Hotel in Monterey which I have alluded to in my transactions, I mean in my briefs that I've filed. The company in the proof of loss set aside a $750,000 reserve for losses in that transaction.

I believe that the losses -- I believe that you have spent more than $750,000 in attorney fees alone in that transaction. That's my belief. And I believe that the losses probably are in the millions on that transaction.

* * *

But again I refer you to Exhibit E in my complaint where there is --

Q Again you're talking about the proof of loss?

A I'm talking about the proof of loss.

Q Okay.

A Where there are hundreds of millions of dollars worth of the loans carried on the books of Financial Corporation as an asset that are -- have loss reserves set aside for them that the company admits not only did Mr. Popejoy, the CEO, know, but that -- that people generally knew in and outside of the company, were fraudulently generated. Fraudulently generated.

So you set aside a loan loss reserve for a fraudulently generated loan? I mean how do you set aside as an accountant a loan loss reserve for a fraudulently generated loan? Number one, you run the risk that the court may set

aside the entire transaction. Number two, you run the risk that there might be as much as treble damages against the company in relation to this asset, so it may be that the asset is no asset at all.

How does the auditor then test for this kind of thing, and what sort of a loan loss writedown are we going to expect in the future? We set aside $750,000, as we did for Cannery Row Hotel, and the claim is that this loan is a fraudulently generated loan.

So now when Peat Marwick sees the $750,000 that the company has set aside as a loan loss reserve, how does Peat Marwick evaluate whether or not this is a proper loan loss reserve? Do we say, well, okay, next year this fraudulently generated loan looks a little worse to us, now we're going to set aside a reserve for $1,250,000 on it?

* * *

Q Was there any dollar figure stated in the proof of loss as to the value of these losses that have been sustained by FCA as a result of whatever was claimed in the proof of loss?

A Do you have a copy of my complaint?

Q I don't have one right here, but you do have a number, don't you? It's 420 million?

A Well, I don't have that number, but as I recall that would not be far from -- it was -- I think it said in excess of $400 million, as I recall.

Q Is it your contention that that $420 million number does not appear in any of the 10-Q's or 10-K's?

A No, it's my contention that that $420 million number, based upon what I know about the Monterey Plaza Hotel, which is only $750,000 of that 420 million, if the Monterey Plaza Hotel

actually represents instead of a $750,000 loss, a several million dollar loss, then using that formula, you could say that if you investigated the other properties, and they came up with the same kind of diverging value, that instead of 400 million, it could be a billion-and-a-half or two billion.

Q So your position is that the amount of the loss as stated in the proof of loss is understated?

A The reserves that are set aside in my opinion are not accurate. But that's not the major criteria. The major criteria is --

Q Mr. Turner, I need to kind of go one step at a time.

A All right.

Q There is a number in the proof of loss that is claimed to be the loss, is

that not correct?

A It says in excess of $400 million, yes.

Q Is it your position that that $400 million number, whatever it may be exactly, is understated?

A That's my belief.

Q It is not your contention that the $420 million number did not make it into a 10-K, is it?

A I never saw it in a 10-K.

Q Are you sure of that?

A What I saw was no reference in the 10-K to the fact that the company had filed with their insurance carriers a claim in excess of $400 million for losses incurred by Financial Corporation of America due to fraud in the loan portfolio believed to have been

instigated by former management.

[Deposition of John Turner 11/9/89; Page 99, lines 24, to Page 102, line 15]

[FROM THE ORAL ARGUMENT OF PETITIONER TURNER BEFORE THE NINTH CIRCUIT AUGUST 20, 1991.]

A perfect example of this is Cannery Row loan. They knew it was improvident and listed it as improvident in the proof of loss - yet they carried it along only setting up a reserve for lost interest during the period they did not want American to fail but wanted it to show assets (even if they were phantom assets) to keep it from failing. So for the first 9 months between November 1985 to July 12, 1986, they were carrying it on the books with a reserve of $750,000. Then for the next year until July 1, 1987 they

carried it with a reserve of $2.5 million. So for the first 21 months they carried it with a reserve not exceeding $2.5 million. Then, on July 1, 1987 they suddenly raised the loss reserve to $14.1 million.

It is no coincidence that also on July 1, 1987 Chairman Popejoy announced a probable increase in loan loss reserves of $150 to $200 million which was in tandem with FHLBB statements that they intended to sell American and the stock price fell by almost 50%.

What I now believe discovery would show is that they decided to increase the reserve for a lot of the improvident loans at that time because they knew that they were going to seize American and wanted it's stock price to fall from the inflated values it was sustaining in the market due to the Glowing 1986 Annual Report which was released to shareholders

in April of 1987.

That same Cannery Row Loan had a loss reserve of $21.4 million a year later after American was seized and sold to Bass. So it jumped from 2.5 million to 21.4 million in a year - simply a question of when you decided to take out the pen and write it down to the value you always knew it to be. By the way this loan was only a $42 million loan to start so they lost not only the interest but 1/2 the principal as well.

Notice First) - that the Proof of loss does not even include all the loans considered improvident. Second) - notice that they differentiate between a troubled loan and a troubled loan that is considered improvident. Every one knew FCA had troubled loans due to the reason they <u>loudly</u> reported - everyone did not know that FCA had a significant number of improvident loans and fraudulent assets

among the troubled loans in its portfolio because they did not report it. Further, all the improvident loans are not listed in the proof of loss. And simple mathematics shows how poorly the District Court reasoned when it improperly weighed the evidence in the proof of loss and determined that it was substantially the same as the $422 million year-end reserve amount revealed in the 1985 10-K. If all of the loan losses listed in the proof of loss were understated by 28 times the amount of the actual loss like the Cannery Row loan - then the impact of the proof of loss would be 28 x $422 million or $11.8 billion. But we now know it was more in the neighborhood of from $3 to $4 billion from recent disclosures. Enough to make FCA/American insolvent at all times after they were discovered if they had been properly accounted for.

It becomes a material fact, for a

jury to decide, if the year-end report in 1984 of $422 million in losses was in fact a report of the financial impact of the proof of loss. The District Court improperly and poorly weighed the evidence to hold that it did - I say it did not and the "Proof of Loss" itself shows that it did not - and simple logic from the Cannery Row Loan example confirms it. So It becomes a disputed fact for proof to a jury.

Oral Argument by John Turner August 20, 1991 before the 9th Circuit

[EXCERPTS FROM PEER REVIEW OF THE FEDERAL HOME LOAN BANK OF SAN FRANCISCO CONDUCTED 1/19/88 THRU 3/11/88]

Significant Supervisory Cases

"Of the 224 total institutions, 48, or 21.4 percent were considered by the Eleventh District to be significant supervisory cases (SSCs) at the initiation of the Peer Review. Detailed information with respect to these institutions is as follows:"

"FHLBB No.	Institution	Total Assets	RAP N/W	GAAP N/W	STATUS
1840	American S&LA	$33,522.0	$281.2	$(783.1)	SSC,RCV,SA"

"Peer Review Corrections and Clarifications Page 6"

"Page 125, paragraph 3, line 4 Should read:" "...the Unit reviews a monthly ..."

"Page 125, paragraph 3, line 5 Should read:" "... from each institution in preparation for attendance at Board meetings."

"Miscellaneous--American and Lincoln"

"page 130, paragraph 2, second sentence"

"Since then, the Agency Group has been able to examine and substantially supervise American, although some direction comes from Washington."

"Reply: This statement is factually incorrect. Since September 1986, the FHLB-SF has not controlled the examination or supervision of American Savings and Loan. On that date, FHLB-SF was notified by Washington that we could not release examination conclusions, nor discuss these matters with American's management without the prior consent of the Chairman. This situation continued through November 1987, at which time another examination was started. The findings of the prior examination were never communicated to the association."

"With respect to supervision, the FHLB-SF has had little involvement since April of

1986, when Chairman Gray and Chief of Staff Fairbanks seized control over the supervisory process. More recently, Agency has not been informed or involved in discussions Washington has had with American management or outside parties on the sale of the association. Most communications of any significance with American management have been made by Roger Martin and Darrel Dochow, and the FHLB-SF has been specifically excluded from these communication. Since the FHLB-SF has been "looped out" by Washington on virtually all matters of significance, we have not been in a position to examine or supervise American effectively, and consistent with our responsibilities."

[Excerpts from page 129-130 of the Peer Review Report]

"12. Miscellaneous -- American and Lincoln

"a. Background"

"There are two Eleventh District institutions that are effectively under the control of the Bank Board/ORPOS. They are American Savings and Loan Association, Stockton California (American) and Lincoln Savings and Loan Association, Irvine, California (Lincoln)"

"With assets of about $34 billion, American . . . As previously noted, the Significant Supervisory Case write-up estimates a $4 billion cost to the FSLIC to resolve this case."

"Because of its size, the Bank Board, under then Chairman Gray, became actively involved in attempts to resolve American's dilemma about two years ago. Since then, the Agency Group has been able to examine and substantially supervise American, although some direction comes from Washington. . ."

[END EXCERPTS FROM PEER REVIEW OF THE FEDERAL HOME LOAN BANK OF SAN FRANCISCO CONDUCTED 1/19/88 THRU 3/11/88]

Turner Exhibit 12; Appellant's Excerpts of Record On Appeal; United States Court of Appeals for the Ninth Circuit; Case 90-15847. From The United States District Court For the Northern District Of California; Case C-89-2486-MHP]

[EXCERPTS FROM THE WRITTEN AND ORAL SWORN TESTIMONY OF M. DANNY WALL, Chairman of the Federal Home Loan Bank Board beginning July 1, 1987 through out the balance of the time covered by this complaint. This testimony was given on November 21, 1989, before the Committee on Banking, Finance and Urban Affairs, U.S. House of Representatives, investigating the Lincoln Savings and Loan Association of Irvine California.]

[From the written testimony: (Asterisks in original document)]

* An examination of the institution begun in 1986 was still pending -- not unlike the situation at Lincoln.

* American continued to suffer periodic liquidity problems. . .

* It was incurring heavy losses and had a $2-$3 billion hole.

We were not concerned just with American and Lincoln . . . We knew these insolvents were a problem, and so we turned a great deal of our attention to resolving them, now that we had money. We set about formulating plans to deal with these institutions in a systematic and effective way."

[From the Oral testimony:]

"In the case of American of Stockton--- when I got to the Bank Board July 1, 1987, I discovered that that office was running American Savings and Loan and I immediately began to undo that. It had been there and it had been run from that office--- and those--- that suite of offices for several years."

"We were watching American in California. Lincoln was just barely on our scope. The situation in American sounds a little bit similar in some ways. The exam had been pending since 1986. The periodic liquidity runs problems came from press reports of one kind or another. There were heavy losses--- they had a $2 to $3 billion dollar hole known at the time."

Turner Exhibit 12; Appellant's Excerpts of Record On Appeal; United States Court of Appeals for the Ninth Circuit; Case 90-15847. From The United States District Court For the Northern District Of California; Case No. C-89-2486-MHP]

[Oral Testimony is contained in a video tape, Turner Declaration Exhibit 56, submitted to the District Court, of the November 21, 1989 Hearings before the House Banking Committee. The Written Testimony taken from copy of the text submitted to the House Banking Committee to accompany Mr. Wall's oral testimony. (Both also contained in Appellants Excerpts of Record, Exhibit 12)]

Turner Exhibit 2; Appellant's Excerpts of Record On Appeal; United States Court of Appeals for the Ninth Circuit; Case 90-15847. From The United States District Court For the Northern District Of California; Case No. C-89-2486-MHP]

SUPERVISORY CHRONOLOGY OF AMERICAN SAVINGS from 11/7/80 through 9/15/88 [Prepared by the FHLB-SF for the House Banking Committee Hearings held in San Francisco California January 12 and 13, 1989.]

"10/3/85 The monthly meeting was held with FCA/American management. In its resolution 85-885, the Bank Board indemnified the new directors of American."

"3/29/88 A meeting was held between FCA/American, and representatives of ORPOS, the FSLIC and OGC. Various topics were discussed including indemnification of officers and directors. . ."

[END EXCERPTS OF THE SUPERVISORY CHRONOLOGY]

♦

[Excerpts from Exhibit "A" setting forth the stock prices of FCA; Defendants' Declaration of Candice G. Clark United States District Court For the Northern District Of California; Case No. C-89-2486-MHP]

[Financial Corp. Stock Prices. Purchases by Petitioner John D. Turner are added to show date, price, and shares purchased]

Date	Volume	High	Low	Close
4/23/86	2550000	15.50	12.25	12.875
4/23/86	5,000 shares Pur avg. 12.52			
4/24/86	2194000	13.00	10.50	11.125
4/25/86	1399800	11.625	10.75	11.00
4/28/86	803400	11.25	10.50	11.50
4/29/86	607300	12.125	11.50	11.625
4/30/86	201300	11.625	11.25	11.375
5/01/86	252000	11.50	11.00	11.125
5/02/86	400700	11.125	10.75	11.00
5/05/86	309600	11.75	10.75	11.75
5/06/86	334800	12.25	12.00	12.25
5/07/86	331400	12.875	12.00	12.625
5/08/86	617800	13.625	12.25	12.25
5/09/86	115200	12.875	12.00	12.75
5/12/86	123600	12.75	12.375	12.50
5/13/86	269000	12.625	12.00	12.50
5/14/86	149600	12.625	12.125	12.25
5/15/86	173200	12.50	12.00	12.125
5/16/86	157400	12.125	11.50	11.625
5/19/86	179000	11.75	11.00	11.00
5/20/86	508300	11.25	10.75	11.125

Date	Volume	High	Low	Close
5/21/86	182500	11.375	10.875	11.00
5/22/86	264900	11.50	11.00	11.50
5/23/86	291600	12.50	11.50	12.255
5/26/86	0	Holiday		
5/27/86	338000	12.625	12.25	12.625
5/28/86	260500	12.875	12.00	12.375
5/29/86	139600	12.125	11.50	11.875
5/30/86	300000	11.75	11.125	11.50
5/30/86	10,000	shares pur at 11.25		
6/02/86	126500	11.50	11.25	11.375
6/03/86	307400	11.375	11.00	11.25
6/04/86	107600	11.50	11.25	11.375
6/05/86	58300	11.625	11.25	11.50
6/06/86	150100	11.50	11.25	11.375
6/09/86	261700	11.25	10.875	11.00
6/10/86	131300	11.25	10.875	11.25
6/11/86	82000	11.25	11.00	11.125
6/12/86	166500	11.25	10.875	11.00
6/13/86	1280900	10.25	9.125	9.375
6/13/86	20,000	shares pur avg 9.31		
6/16/86	833100	9.25	8.50	8.75
6/16/86	20,000	shares pur avg 8.69		
6/17/86	635800	8.875	8.125	8.125
6/18/86	1205900	8.25	7.25	8.00

Date	Volume	High	Low	Close
6/18/86	20,000	shares pur avg 7.75		
6/19/86	629100	8.375	7.625	8.125
6/20/86	329900	8.375	8.00	8.25
6/23/86	626900	9.125	8.125	9.00
6/24/86	572800	9.25	9.00	9.125
6/25/86	290200	9.25	8.75	8.875
6/26/86	182600	8.875	8.375	8.375
6/27/86	245800	8.625	8.50	8.50
6/30/86	193900	8.875	8.625	8.75
7/01/86	249900	9.25	8.625	9.125
7/02/86	225600	9.125	8.875	9.00
7/03/86	551900	9.75	8.875	9.75
7/04/86	0	Holiday		
7/07/86	340600	9.75	9.00	9.125
7/08/86	265400	9.00	8.375	8.75
7/09/86	356500	9.25	8.375	8.75
7/10/86	157300	9.375	9.00	9.125
7/11/86	207500	9.375	8.875	8.875
7/14/86	332400	9.50	8.875	9.375
7/15/86	251600	9.375	9.00	9.125
7/16/86	308700	9.25	8.875	9.00
7/17/86	140800	9.25	9.00	9.25
7/18/86	115600	9.375	9.00	9.25
7/21/86	130200	9.25	9.25	9.125
7/22/86	137700	9.125	8.875	9.00
7/23/86	372900	9.375	8.50	8.625
7/24/86	147500	8.75	8.625	8.75
7/25/86	75900	9.00	8.75	8.875
7/28/86	99000	8.875	8.625	8.625

Date	Volume	High	Low	Close
7/29/86	73300	8.75	8.625	8.625
7/30/86	212100	8.625	8.375	8.625
7/31/86	90600	8.50	8.25	8.375
8/01/86	193800	8.25	7.875	8.125
8/04/86	175000	8.125	7.875	8.00
8/05/86	112700	8.25	7.875	8.00
8/06/86	92800	8.125	7.875	7.875
8/07/86	190800	8.25	7.75	8.00
8/08/86	133400	8.00	7.75	7.75
8/11/86	168200	8.25	7.875	8.25
8/12/86	198400	8.75	8.125	8.75
8/13/86	216300	8.875	8.375	8.875
8/14/86	111200	8.875	8.50	8.625
8/15/86	63000	8.625	8.50	8.625
8/18/86	153400	8.75	8.375	8.75
8/19/86	173600	9.125	8.50	9.00
8/20/86	167700	9.375	9.00	9.25
8/21/86	109700	9.375	9.00	9.00
8/22/86	95600	9.00	8.875	9.00
8/25/86	44100	9.00	8.00	8.875
8/26/86	55800	9.00	8.75	8.875
8/27/86	37300	9.00	8.75	8.875
8/28/86	149700	9.25	8.625	9.00
8/29/86	142300	9.25	9.00	9.00
9/01/86	0	Holiday		
9/02/86	83900	9.125	8750	8.75
9/03/86	44700	8.875	8.625	8.625
9/04/86	161400	8.75	8.25	8.50
9/05/86	137100	8.625	8.375	8.50
9/08/86	108600	8.625	8.25	8.375
9/09/86	44100	8.50	8.25	8.375
9/10/86	99700	8.50	8.00	8.25

Date	Volume	High	Low	Close
9/11/86	206900	8.25	7.625	7.75
9/12/86	231800	7.75	7.375	7.50
9/15/86	248100	7.75	7.50	7.50
9/16/86	131100	7.875	7.50	7.875
9/17/86	107700	7.75	7.50	7.55
9/18/86	171800	7.625	7.50	7.625
9/19/86	406100	7.625	7.25	7.375
9/22/86	127800	7.75	7.25	7.75
9/23/86	174700	7.75	7.25	7.50
9/24/86	271000	7.75	7.25	7.25
9/25/86	172700	7.375	7.00	7.125
9/26/86	195800	7.50	7.125	7.50
9/29/86	95600	7.50	7.25	7.375
9/30/86	122700	7.75	7.50	7.50
10/01/86	117500	7.75	7.50	7.50
10/02/86	55700	7.50	7.25	7.50
10/03/86	68900	7.50	7.375	7.375
10/06/86	73400	7.625	7.375	7.50
10/07/86	254100	8.125	7.50	8.00
10/08/86	285000	8.25	7.75	8.125
10/09/86	144900	8.125	7.25	7.75
10/10/86	97800	7.875	7.625	7.75
10/13/86	65800	7.875	7.50	7.875
10/14/86	57400	7.875	7.625	7.75
10/15/86	80600	7.875	7.50	7.625
10/16/86	123900	7.75	7.375	7.50
10/17/86	233100	7.75	7.375	7.625
10/20/86	95800	7.625	7.375	7.375
10/21/86	108500	7.50	7.25	7.375
10/22/86	238700	7.50	7.25	7.375
10/23/86	347400	7.50	7.00	7.25

Date	Volume	High	Low	Close
10/24/86	124400	7.50	7.25	7.375
10/27/86	108700	7.50	7.375	7.375
10/28/86	83700	7.50	7.25	7.375
10/29/86	61600	7.50	7.375	7.50
10/30/86	134900	7.75	7.375	7.625
10/31/86	128400	7.625	7.375	7.375
11/03/86	123100	7.625	7.375	7.625
11/04/86	74100	7.625	7.505	7.50
11/05/86	134800	7.625	7.375	7.50
11/06/86	121900	7.625	7.125	7.125
11/07/86	66100	8.375	7.625	8.125
11/10/86	139700	7.50	7.25	7.375
11/11/86	178900	7.50	7.25	7.25
11/12/86	89600	7.25	7.125	7.125
11/13/86	295600	7.25	6.875	7.125
11/14/86	104000	7.125	6.875	7.125
11/17/86	191900	7.25	7.00	7.125
11/18/86	128899	7.25	7.00	7.00
11/19/86	75800	7.125	7.00	7.125
11/20/86	94600	7.125	7.00	7.125
11/21/86	352700	7.375	7.00	7.25
11/24/86	60700	7.375	7.125	7.25
11/25/86	98100	7.25	7.00	7.25
11/26/86	76700	7.25	7.125	7.125
11/27/86	0	Holiday		
11/28/86	89900	7.25	7.00	7.25
12/01/86	65200	7.255	7.000	7.125
12/02/86	199900	7.255	7.00	7.25
12/03/86	73600	7.255	7.125	7.125
12/04/86	478200	7.75	7.125	7.75
12/05/86	278100	7.875	7.50	7.625

Date	Volume	High	Low	Close
12/08/86	256500	7.75	7.50	7.75
12/09/86	144500	7.75	7.50	7.75
12/10/86	114200	7.625	7.375	7.50
12/11/86	109500	7.50	7.375	7.50
12/12/86	107900	7.50	7.125	7.25
12/15/86	305900	7.25	7.00	7.123
12/16/86	169700	7.375	7.125	7.375
12/17/86	1238400	8.375	7.75	8.25
12/18/86	321200	8.50	8.125	8.125
12/19/86	320500	8.25	7.75	7.875
12/22/86	172700	8.00	7.75	8.00
12/23/86	265400	8.00	7.75	7.875
12/24/86	141100	7.875	7.625	7.625
12/25/86	0	Holiday		
12/26/86	84600	8.00	7.625	7.875
12/29/86	134100	8.00	7.75	7.75
12/30/86	194800	7.75	7.50	7.50
12/31/86	222500	7.625	7.50	7.50
1/01/87	0	Holiday		
1/02/87	98700	8.00	7.625	7.875
1/05/87	256800	9.00	7.875	8.125
1/06/87	708000	9.00	8.25	8.625
1/07/87	193700	8.625	8.375	8.50
1/08/87	120400	8.75	8.50	8.625
1/09/87	103000	8.625	8.375	8.625
1/12/87	169300	8.625	8.375	8.50
1/13/87	421600	9.125	8.375	9.00
1/14/87	204600	9.00	8.50	8.625
1/15/87	140200	8.75	8.50	8.50
1/16/87	164100	8.625	8.375	8.50
1/19/87	126600	8.875	8.375	8.75
1/20/87	365400	9.00	8.625	8.75

Date	Volume	High	Low	Close
1/21/87	611500	9.375	8.625	9.375
1/22/87	1096300	10.25	9.375	10.25
1/23/87	461400	10.375	9.00	9.375
1/26/87	266700	9.375	9.00	9.25
1/27/87	177700	9.625	9.125	9.625
1/28/87	208000	9.625	9.25	9.625
1/29/87	345700	9.50	9.25	9.25
1/30/87	571700	9.25	8.75	8.75
2/02/87	367000	8.875	8.50	8.625
2/03/87	344800	8.75	8.125	8.375
2/04/87	147400	8.625	8.375	8.50
2/05/87	264000	9.00	8.50	8.875
2/06/87	358100	9.375	8.75	9.125
2/09/87	266400	9.125	8.625	8.75
2/10/87	421000	8.75	8.125	8.375
2/11/87	279200	8.625	8.25	8.25
2/12/87	198700	8.625	8.25	8.25
2/13/87	365900	8.50	8.125	8.375
2/16/87	0	Holiday		
2/17/87	323500	8.50	8.125	8.25
2/18/87	247800	8.375	8.125	8.25
2/19/87	302300	8.875	8.125	8.75
2/20/87	155000	8.75	8.625	8.75
2/23/87	129900	8.75	8.375	8.50
2/24/87	239400	9.00	8.625	8.875
2/25/87	485100	9.125	8.625	8.75
2/26/87	86700	8.75	8.50	8.75
2/27/87	95400	8.75	8.50	8.75
3/02/87	106400	8.875	8.50	8.50
3/03/87	109700	8.75	8.50	8.75

Date	Volume	High	Low	Close
3/04/87	299800	9.125	8.625	9.125
3/05/87	473200	9.375	9.125	9.125
3/06/87	167800	9.25	9.00	9.125
3/09/87	151400	9.00	8.75	9.00
3/10/87	161000	9.375	8.875	9.375
3/11/87	153600	9.375	9.125	9.25
3/12/87	134500	9.375	9.00	9.25
3/13/87	63100	9.375	9.00	9.00
3/16/87	142900	9.25	8.875	9.125
3/17/87	61800	9.25	9.00	9.25
3/18/87	274300	9.375	9.125	9.375
3/19/87	927500	10.125	9.375	9.375
3/20/87	559100	10.125	9.75	9 75
3/23/87	903000	9.75	9.00	9.00
3/24/87	442800	9.125	8.625	8.625
3/25/87	504400	8.875	8.125	8.50
3/26/87	413600	8.625	8.25	8.375
3/27/87	239500	8.375	8.125	8.375
3/30/87	538400	8.25	7.625	8.00
3/30/87	10,000	shares pur at 7.875		
3/31/87	399600	8.125	7.625	8.00
4/01/87	333800	7.75	7.50	7.75
4/02/87	178400	7.75	7.50	7.75
4/03/87	146700	8.125	7.625	8.125
4/06/87	139200	8.50	7.75	8.00
4/07/87	193200	8.00	7.375	7.75
4/08/87	137000	7.75	7.625	7.75
4/09/87	307100	7.75	7.50	7.625
4/10/87	294000	7.625	7.375	7.375

Date	Volume	High	Low	Close
4/13/87	179100	7.625	7.125	7.125
4/14/87	346700	8.375	8.00	8.25
4/14/86	5,000	shares pur at		7.25
4/15/87	116100	7.375	7.125	7.375
4/16/87	110800	7.50	7.25	7.375
4/17/87	0	Holiday		

[End excerpts from Declaration of Candice Clark]

Thurston Exhibit 12; Appellee's Excerpts of Record On Appeal; United States Court of Appeals for the Ninth Circuit; Case 90-15847. From The United States District Court For the Northern District Of California; Case No. C-89-2486-MHP]

[Pertinent Excerpts below are from the above exhibit]

MAY 16, 1986

SAVINGS & LOAN INDUSTRY

It looks as though 1986 will be even better than last year for the savings and loan industry. Interest rates are lower and we think that small downward movements in rates will be the order of the day for the balance of the year, in contrast to the sharp drops of the past six months.

VALUE LINE

FIN'L CP. AMER. NYSE - FIN

MAY 16, 1986

RECENT PRICE 13 TIMELINESS 2

SAFETY 5

BETA 2

1988-90 Projections

Price	Gain	Ann'l Return Total
High 30	(+130%)	24%
Low 17	(+ 30%)	8%

Financial Corp. of America's March Quarter earnings were not of the highest quality. The Company reported net income of $31.4 million, or 74¢ per share. But $85.5 million in gains from sales of loans and mortgage backed securities produced all of the earnings. (The Company also realized a $17.7 million extraordinary gain from the use of tax-loss carryforwards). The investment community typically takes a dim view of profits from such sources. Indeed, upon disclosure that FCA had actually posted a $7.2 million pretax loss ex the gain on asset sales, its shares fell about 17% This loss was triggered by provision for losses on loans and real estate, which

bolstered the reserve to $570 million.

FCA recently created the American Real Estate Group, a division of American Savings and Loan. The new unit will manage $1.85 billion problem-loan portfolio and $800 million in currently performing construction loans. It is modeled after a task force that sold over $400 million in real estate loans last year. The Company intends to sell an additional $600 million of loans this year.

The balance sheet is being refurbished. FCA is replacing its short term institutional deposits with long term advances from the Federal Home Loan Bank. This strategy narrows the company's mismatch of rate sensitive liabilities over assets. In the 12 months ended March 31, 1986 the above gap on the one year basis was closed to $13.7 billion from $19.0 billion.

These shares are risky. FCA's loan portfolio favors fixed rate mortgages by a ratio of almost nine to one. A continued low interest rate environment could drive earnings to near record levels and lead to exceptional capital gains by decades end. Conversely, the consequences of a sudden surge in interest rates (which we're not forecasting) could be devastating, especially since the loan portfolio already is poor. So these extremely volatile shares warrants a cautious approach even though they're ranked highly for timeliness.

[END VALUE LINE EXCERPTS]

[Turner Exhibit 21; Plaintiff's Uncontroverted Facts From The United States District Court For the Northern District Of California; Case No. C-89-2486-MHP]

FCA NEWS

Corporate Offices Financial Corporation of America, 18401 Von Karmon Avenue PO Box 19689 Irvine California 92713 9689

Contact Layna J. Browdy (714)553-6930

IRVINE, CA April 23, 1986 Financial Corporation of America (NYSE FIN)

[Paragraphs 3; page 1 of News Release]

"During the first quarter of this year, we were very pleased to receive demonstrably strong support and cooperation from the Federal Home Loan Bank Board through an official letter of support from the Chairman of the FHLBB and the issuance of an unqualified auditors' opinion from our outside auditors, Peat, Marwick, Mitchell & Co., for the Company's 1985 financial statements. We believe this is yet another sign of the Company's rebounding

performance. This, coupled with our accomplishments and efforts to stabilize and revitalize the overall operation, firmly indicates that the Company is moving toward a normalized savings and loan operation," said Popejoy

[Page 3, Para. 2; page 1 of News Release]

American Savings regulatory net worth increased 54.6 percent to $506.5 million at March 31, 1986 compared with $327.7 million at March 31, 1985. FCA's net worth was $276.2 million and $149.6 million respectively for the comparable period. Total assets were $26.4 billion at March 31, 1986, down from $28.0 billion at March 31, 1985 and down from $27.4 billion at December 31, 1985.

[END IRVINE, CA April 23, 1986 Financial Corporation of America News Release]

[Thurston Exhibit 45; Appellees' Supplemental Excerpts of Record On Appeal; United States Court of Appeals for the Ninth Circuit; Case No. 90-15847. From The United States District Court For the Northern District Of California; Case No. C-89-2486-MHP]

FCA NEWS

Corporate Offices Financial Corporation of America, 18401 Von Karmon Avenue PO Box 19689 Irvine California 92713 9689

Contact Layna J. Browdy (714)553-6930

IRVINE, CA July 23, 1986 Financial Corporation of America (NYSE FIN)

[Paragraphs 3-5; page 1 of News Release]

"The favorable interest rate environment continues to provide opportunities for the Company to make significant progress in most facets of our business. I believe the company as a whole is in better overall financial condition today than it's been at any point since 1984. Even though we made substantial addition to our reserve for losses on loans and real estate, this was done not only because it was necessary and prudent but

because it helps provide financial muscle for future corporate strength." said William J. Popejoy, chairman and chief executive officer of FCA and its principal operating subsidiary, American Savings and Loan Association.

According to Popejoy, further additions to the reserve for losses on loans and real estate were appropriate largely due to continuing deterioration of real estate values in certain oil and agricultural dominated markets. We are continuing to review the Texas real estate market where values have slid downward from appraised values which were done only six to eight months ago. He also noted that the real estate market remained flat in San Joaquin Valley of California which is agriculturally oriented and also the location of a portion of real estate owned by the Company.

Scheduled items at June 30, 11986 were reduced to $1.83 billion or 6.28 percent of total regulatory assets down from $1.92 billion or 7.10 percent at May 31, 1986. Scheduled items at March 31, 1986 were $1.85 billion or 7.00 percent of total regulatory assets.

. . . American Savings regulatory net worth increased 69 percent to $511.62 million at June 30, 1986. . .

. . .Popejoy cites several key areas of operation which have experienced notable improvement over approximately the past two years. . ."The outlook for this company is positive. Yes we have problems but we believe they are manageable," said Popejoy. . .

Stockholder Equity

December 31, 1985 $229,728,000

Stockholder equity

June 30, 1986 $284,849,000

[END IRVINE, CA July 23, 1986 Financial

Corporation of America News Release]

EXHIBIT D-32 FOR IDENTIFICATION
BARBARA VOLZING N.P.
DATE 11-7-89
DEPO OF John Turner
DEFENDANT'S EXHIBIT D-34A

[Thurston Exhibit 52; Appellees' Supplemental Excerpts of Record On Appeal; United States Court of Appeals for the Ninth Circuit; Case No. 90-15847. From The United States District Court For The Northern District Of California Case No. C-89-2486-MHP]

FCA NEWS

Corporate Offices Financial Corporation of America, 18401 Von Karmon Avenue PO Box 19689 Irvine California 92713 9689

Contact Layna J. Browdy (714)553-6930

IRVINE, CA January 29, 1987 Financial Corporation of America (NYSE FIN)

[Paragraph 3; page 1 of News Release]

"As we had previously projected, we are pleased to report an operating profit during the past quarter and attribute this result to the approximately $5.75 billion increase in the mortgage backed securities portfolio at the end of the

third quarter of 1986. That strategic move was not an interest rate bet. To the contrary it was planned asset growth to generate solid net interest income which also was designed to hedge against higher interest rates. . ." said William J. Popejoy . . . "This substantially reduced gap, coupled with our growth, means that today the Company is far less vulnerable to rising rates than it was two years ago. . ." he said.

"Our American Real Estate Group has achieved outstanding results by far exceeding their ambitious 1986 sales goal. In fact the Company has sold real estate totalling $1.1 billion in book value in little more than a year-and-a-half. Results like that rank AREG among the top real estate development companies in the nation," said Popejoy.

[Paragraphs 4; page 3 of News Release]

American Savings regulatory capital increased to $552.1 million at December 31, 1986 compared with $453.5 million at December 31, 1985, an increase of 22%. FCA's net worth was $313.9 million and $229.7 million respectively at the comparable dates. Total assets were $33.95 billion at year-end 1986 and $27.4 billion at year-end 1985.

[END IRVINE, CA January 29, 1987 Financial Corporation of America News Release]

EXHIBIT D-55 FOR IDENTIFICATION
BARBARA VOLZING N.P.
DATE 11-7-89
DEPO OF John Turner
DEFENDANT'S EXHIBIT D-55

[Turner Exhibit 42; Plaintiff's Uncontroverted Facts From The United States District Court For the Northern District Of California; Case No. C-89-2486-MHP]

FCA NEWS

Corporate Offices Financial Corporation of America, 18401 Von Karmon Avenue PO

Box 19689 Irvine California 92713 9689
Contact Layna J. Browdy (714)553-6930

[All Paragraphs All pages of News Release]

FINANCIAL CORPORATION OF AMERICA REPORTS PRELIMINARY DISCUSSIONS WITH POSSIBLE BUYERS

IRVINE, CA (March 27, 1987) -- Financial Corporation of America (NYSE: FIN) today reported that it very recently had preliminary talks with parties concerning the possible acquisition of FCA and its principal operating subsidiary, American Savings and Loan Association. The identity of the parties will not be disclosed at this time.

"I want to emphasize that the recent discussions we've had were extremely tentative in nature concerning the

potential purchase of this company. We are publicly sharing this information at this time, because we believe it is appropriate, in view of the current rumor laden atmosphere, to publicly disclose such information -- even if it only is exploratory and may not develop further'" said William J. Popejoy, chairman and chief executive officer of FCA and American Savings.

The Company also said that it is negotiating with a firm to advise and represent FCA regarding potential acquisition matters as they may arise. The identity of the firm was not disclosed.

"The recently circulated rumors regarding the possible purchase of FCA prompted us to seek a firm to help protect and serve our shareholders. As we have said previously, we want to seize and maximize opportunities which are in

the Company's best interests," he said.

"The management and directors of FCA would only consider the sale of this Company under conditions which would create an appropriate amount of additional capital strength and would benefit and serve the best interests of our shareholders, customers and employees," said Popejoy.

"Since 1984, I believe much has been accomplished toward improving the health of this company. We have increased profitability, regulatory capital, real estate sales and the strength of the retail branch system. At the same time, we have reduced the Company's interest rate risk as expressed by our One Year Negative Gap ratio, scheduled items/nonperforming assets, operating expenses and volatile institutional deposit base. Also, the result of our strategies have improved asset quality,

helped stabilize the deposit base and allowed the Company to vigorously compete in the marketplace. The attractiveness of this Company, we believe, has been enhanced through these efforts and points the way to a bright future," said Popejoy.

American Savings, based in Stockton, California, is the nation's largest savings and loan association and operates 172 retail savings branches and 21 loan centers throughout California.

[END IRVINE, CA (March 27, 1987) Financial Corporation of America News Release]

[Turner Exhibit 44; Plaintiff's Uncontroverted Facts From The United States District Court For the Northern District Of California; Case No. C-89-2486-MHP]

FCA NEWS

Corporate Offices Financial Corporation of America, 18401 Von Karmon Avenue PO

Box 19689 Irvine California 92713 9689

Contact Layna J. Browdy (714)553-6930

[Paragraphs 6 pages 1 of News Release]

FINANCIAL CORPORATION OF AMERICA REPORTS PROFIT FOR SEVENTH CONSECUTIVE QUARTER

IRVINE, CA (April 22, 1987) -- Financial Corporation

Further progress was achieved in the Company's ongoing reduction of its interest rate risk and additions to American Savings' regulatory capital. The Company's One Year Negative Gap (an industry-wide regulatory measurement of assets and liabilities repricing in a one year period) was reduced to 24.0% Although the Company's One Year Negative Gap remains marginally higher than its largest competitors, this interest rate risk has been dramatically reduced from

its highest level of about 69% in mid 1985 and is down from 51.7% at March 31, 1986.

American Savings regulatory capital has continued to improve and rose to $560.9 million at March 31, 1987. This is an increase of 85% from a low of $303 million at June 30, 1985 and was up 11% from $506.5 at March 331, 1986.

Total assets were $33.859 billion
Total Stockholder Equity $320 million at March 31, 1987.

"In January, we once again received a strong letter of support from the Federal Home Loan Bank Board as a result of FCA/American Savings' continuing financial improvement in all areas of concern. This support essentially extends through the first quarter of

1988. I believe this is important, because it proves that a troubled Savings and Loan with commitment and cooperation between the regulators and the management team of the Company can accomplish improved financial health and recovery of the institution without extending even a dollar from the Federal Savings and Loan Insurance Corporation (FSLIC). American Savings is an example of how well this approach can work," said Popejoy.

"There has been much speculation recently over the potential selling of this company and the role that the FHLBB would play if such a thing were to occur. Unfortunately, very little of this speculation bears any resemblance to reality. For nearly two years, this Company has publicly stated that it would be open to the possibility of a capital infusion through merger...."The

management and directors of FCA would only consider the sale or merger of this Company under conditions which would create an appropriate amount of additional capital strength and would benefit and serve the best interests of our shareholders, customers and employees," said Popejoy.

" With American's financial strength on the mend, in recent weeks we have launched a strong push for a larger share of the Adjustable Rate Mortgage (ARM) market..."

[END IRVINE, CA (April 22, 1987) Financial Corporation News Release]

[Excerpts from Petitioner's complaint referring to attached Exhibit "D", a report prepared for the Use of the Subcommittee on Oversights and Investigations of the Committee of Energy and Commerce U.S. House of Representatives, Dated April 9th., 1987]

"Plaintiff believes and alleges that the FHLBB was a substantial and culpable participant in the schemes and conspiracies as outlined herein and who aided and abetted in a conspiracy of coverup with defendants herein. See Exhibit "D" A report prepared for the Use of the Subcommittee on Oversights and Investigations of the Committee of Energy and Commerce U.S. House of Representatives, Dated April 9th., 1987, and particularly the letter of transmittal from Congressman John D. Dingell, Chairman of the subcommittee on Oversight and Investigations, wherein these findings are made by the congressional sub-committee:

(a) page iii paragraph 4, "Other findings include the Bank Board's knowledge of and involvement in fraudulent securities activities.";

(b) page 3, paragraph 4, "The subcommittee's findings are supported by a substantial record of inaction and non-enforcement by the FHLBB on securities matters, as well as deliberate actions by the agency that resulted in misleading financial reports and apparent violations of the securities laws.";

(c). page 19, paragraph 2 "The subcommittee found that the FHLBB has engaged in a persistent pattern of inaction and non-enforcement, and, when that was not enough, in deliberate actions which culminated in misleading financial reports and apparent violations of securities laws.";

(d) page 21, paragraph 2, "Early warnings were ignored and not publicly reported, effective regulatory actions were not taken, and violations of law and regulations were permitted to continue. In every case, the responsibility to assure open and complete disclosure of material information was subordinated to the FHLBB's desire to hide major problems from the public.";

(e) page 23, paragraph 1, "Ironically, the FHLBB's initial failure to take proper regulatory action at American (American Savings and Loan of Florida---not the Defendant American in this action) ultimately led to the FHLBB's participation in securities fraud in an attempt to mitigate financial damage to the institution. The inherit conflict between financial regulation and securities law enforcement is vividly

demonstrated by the FHLBB's actions when the agency determined that American was controlled by unfit management."

(f) page 19, paragraph 2,"Accounting Gimmicks."

"The FHLBB's claim that it applies the same accounting and enforcement rules as the SEC was disproved many times during the Subcommittee's hearings. For example, the FHLBB has extensively used special regulatory accounting principals, not recognized by the SEC, to substantially inflate the reported net worth of individual savings and loan associations and the industry as a whole. In just four years, the FHLBB's use of these special rules caused a portion of regulatory net worth of the of the savings and loan industry which is attributable to "good will" and other

intangible assets of little or no value to grow from one percent to more than seventy percent."

(g) page 29, paragraph 1, "The FHLBB has demonstrated clearly that it cannot or will not enforce the Federal securities laws as intended by congress."

99. Plaintiff calls attention to this study to lend weight to his allegations that the FHLBB and Defendants used improper schemes in their dealings with FCA, American and their subsidiaries and has placed itself and its interests in protecting itself and its insurance arm FSLIC, in an imperial and superior position to that of other important public interests overseen by the Securities and Exchange Commission, a sister regulatory body, who are charged with an equal duty to protect a public

interest and also have a public duty and trust.

Plaintiff respectfully suggests to the court that the FHLBB has committed gross regulatory negligence in violation of its charter and high position of trust and has shown in the past and in this matter before the court that it is willing to violate securities laws in an imperious manner, and enter into schemes causing great harm to the public shareholders, who may be powerless against it due to its favored presumption of legitimacy under federal law.

[END EXCERPTS FROM PETITIONER's COMPLAINT REFERRING TO "EXHIBIT D"]

STATUTORY AND REGULATORY PROVISIONS INVOLVED

United States Code

Title 15

§ 78j. Manipulative and deceptive devices

It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange--

* * *

(b) To use or employ, in connection with the purchase or sale of any security registered on a national securities exchange or any security not so

registered, any manipulative or deceptive device or contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

Code of Federal Regulations

Title 17

§ 240.10b-5 Employment of manipulative and deceptive devices.

It shall be unlawful for any person, directly or indirectly, by use of any means or instrumentality of interstate commerce, or of the mails or of

any facility of any national securities exchange,

(a) To employ any device, scheme, or artifice to defraud,

(b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, or,

(c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person,

in connection with the purchase or sale of any security.

Federal Rules of Civil Procedure

Rule 56 Summary Judgment

* * *

(c) Motion and Proceedings Thereon. The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party prior to the day of the hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.